Jordan Weiner (SBN 356297)
jordan@lrcl.org
La Raza Centro Legal
474 Valencia St., Ste. 295
San Francisco, CA 94103
Telephone: (415) 553-3435

Attorney for Petitioner

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

JORGE WILLY VALERA CHUQUILLANQUI, Petitioner, v. SERGIO ALBARRAN, Field Office Director of the San Francisco Immigration and Customs Enforcement Office[1] et al., Respondents.	CASE NO. 3:25-cv-06320-TLT **PETITIONER'S ANSWERS TO QUESTIONS FOR SEPTEMBER 23, 2025 HEARING**

[1] Sergio Albarran is automatically substituted as Polly Kaiser's successor pursuant to Rule 25(d) of the Federal Rules of Civil Procedure.

On September 16, 2025, the Court issued questions for the parties to answer before the September 23, 2025 hearing on Petitioner's Motion For Preliminary Injunction. Petitioner respectfully submits the below answers to the questions.

I. CONCESSIONS

1. Petitioner-Plaintiff concedes that Petitioner-Plaintiff has no criminal history
2. Petitioner-Plaintiff concedes that Petitioner-Plaintiff has complied with and attended all required immigration proceedings.
3. Petitioner-Plaintiff's immigration hearing was re-scheduled for August 21, 2026. There has been no decision on the motion to dismiss. Petitioner-Plaintiff concedes that the government sought to dismiss Petitioner-Plaintiff's immigration case for the purpose of placing Petitioner-Plaintiff in expedited removal proceedings.

II. BACKGROUND INFORMATION

1. Petitioner-Plaintiff was out of government custody between the time he entered the United States and his July 25, 2025 detention for two years and 7 months.
2. Petitioner-Plaintiff has family obligations in the United States. He is close with his two siblings, who live near him. He helps care for their children while they are at work. He also spends time with them on the weekends and offers emotional and logistical support. For example, he helped his sister, who was recently granted asylum, navigate the immigration court process.
3. Petitioner-Plaintiff has community obligations in the United States. He attends Church every Sunday in the Mission and is an active member of his congregation. He is available to the church members when they need him to volunteer for a project or

support other members.

4. Petitioner-Plaintiff is employed as a janitor and dishwasher for a catering service in the Mission named Retool.

5. On December 20, 2022, Customs and Border Protection ("CBP") officers detained and released Petitioner-Plaintiff into the United States.

    i. Petitioner-Plaintiff was released pursuant to 8 U.S.C. § 1226(a).

    ii. At the time of Petitioner-Plaintiff's release on December 20, 2022, CBP officers determined that Petitioner-Plaintiff was not a flight risk or danger to the community.

    iii. At the time of Petitioner-Plaintiff's release from CBP's custody, Petitioner-Plaintiff expressed an intent to apply for asylum.

    iv. After Petitioner-Plaintiff was released, the government initiated removal proceedings pursuant to 8 U.S.C. § 1229.

6. Petitioner-Plaintiff attended an in-person hearing before an immigration judge ("IJ") on July 25, 2025. The government moved to dismiss removal proceedings against Petitioner-Plaintiff.

    i. The government's Notice to Appear, DHS Form I-862 (6/22) indicated that Petitioner-Plaintiff was "an alien present in the United States who has not been admitted or paroled."

    ii. The government moved to dismiss removal proceedings against Petitioner-Plaintiff so that they could place him into expedited removal proceedings and summarily deport him without a hearing on his asylum application. It is well known that the current Presidential administration is attempting a mass-deportation campaign. Many federal courts have found that immigration officials are violating constitutional rights in pursuit of that goal, such as here.

iii. Petitioner-Plaintiff is currently preparing a written opposition to the government's motion to dismiss his proceedings with help from the Justice and Diversity Center of the Bar Association of San Francisco.

iv. Petitioner-Plaintiff's understanding is that the IJ did not deny the government's motion to dismiss removal proceedings but gave Petitioner-Plaintiff time to respond. The motion is currently pending. However, if an IJ were to deny the motion, the government cannot initiate expedited removal proceedings against Petitioners because there is currently a stay of the government's application of expedited removal to "people living in the interior of the country who have not previously been subject to expedited removal," which includes Petitioners. *Make the Rd. N.Y. v. Noem*, No. 25-cv-190 (JMC), 2025 LX 389496, at *70 (D.D.C. Aug. 29, 2025).

III. PROCEDURAL DUE PROCESS

1. *[Question for Respondent-Defendants about cost of providing an immigration hearing prior to arrest or detention]*
2. Textual and structural arguments for why the government Petitioner-Plaintiff is not subject to mandatory detention under § 1225(b)(2):

Until recently, the government recognized that people who were apprehended at the border and released on an Order of Recognizance, like Petitioner-Plaintiff, were entitled to bond hearing under § 1226(a). Now, however, the government has dramatically reinterpreted § 1225(b)(2) to mean that anyone who is inadmissible to the United States (entered without inspection), no longer how long they have been here, is still "seeking admission" and therefore subject to mandatory detention. Opp. at 4. As explained below, this interpretation runs contrary to the text, structure, agency application, and legislative history of the statute. *See Salcedo Aceros v. Kaiser*, No. 3:25-cv-06924-EMC, 2025 U.S. Dist. LEXIS 179594, at *20-32 (N.D. Cal. Sept. 12, 2025). Petitioner-Plaintiff encourages the Court to adopt the reasoning *Salcedo Aceros*, a recent case in this district with nearly identical facts, and reject the government's contention that Petitioner-Plaintiff is subject to mandatory detention under § 1225(b)(2).

The text of § 1226(a) and § 1225(b)(2) demonstrate that Petitioner-Plaintiff is not subject to mandatory detention.

Under the plain text §1225(b)(2) Petitioner-Plaintiff is not subject to mandatory detention under § 1225(b)(2) because he is not "seeking admission" to the United States.

Section § 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." (emphasis added).

The phrase "seeking admission" implies a present-tense action. Someone who is already in the United States is no longer "seeking admission" because they have already entered and, in the case of Petitioner-Plaintiff, have lived in the United States for over two and a half years.[2] If the phrase "seeking admission" did not modify the phrase "applicant for admission," then there would be no reason to include it. *See Salcedo Aceros*, No. 3:25-cv-06924-EMC, 2025 U.S. Dist. LEXIS 179594, at 16 (invoking the rule against surplusage). Respondent-Defendant's reading of the statute that non-citizens who have entered the United States and lived here for years are still "seeking admission" is "unnatural and ignores the tense of the term." *See id.*

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[2] Several courts have used the following example: "[S]omeone who enters a movie theater without purchasing a ticket and then proceeds to sit through the first few minutes of a film would not ordinarily then be described as 'seeking admission' to the theater. Rather, that person would be described as already present there. Even if that person, after being detected, offered to pay for a ticket, one would not ordinarily describe them as 'seeking admission' (or 'seeking' 'lawful entry') at that point—one would say that they had entered unlawfully but now seek a lawful means of remaining there." *Salcedo Aceros*, No. 3:25-cv-06924-EMC at *17 (citing *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588, at *7 (S.D.N.Y. Aug. 13, 2025).

In contrast, the plain text of § 1226 demonstrates that subsection (a) applies to Petitioner-Plaintiff. By its own terms, § 1226(a) applies to anyone who is detained "pending a decision on whether the [noncitizen] is to be removed from the United States." 8 U.S.C. § 1226(a). Section 1226 explicitly confirms that this authority includes not just noncitizens who are deportable pursuant to 8 U.S.C. § 1227(a), but also noncitizens, such as Plaintiff-Petitioner, who are inadmissible pursuant to 8 U.S.C. § 1182(a). While § 1226(a) provides the right to seek release, § 1226(c) carves out specific categories of noncitizens from being released—including certain categories of inadmissible noncitizens—and subjects them instead to mandatory detention. *See, e.g.*, § 1226(c)(1)(A), (C).

If Respondent-Defendant's position that § 1226(a) did not apply to inadmissible noncitizens such as Petitioner-Plaintiff entered the United States without inspection were correct, there would be no reason to specify that § 1226(c) governs certain persons who are inadmissible; instead, the statute would only have needed to address people who are deportable for certain offenses. Notably, recent amendments to § 1226 dramatically reinforce that this section covers people like Petitioner-Plaintiff who DHS alleges to be present without admission. The Laken Riley Act added language to § 1226 that directly references people who have entered without inspection, those who are inadmissible because they are present without admission. *See* Laken Riley Act (LRA), Pub. L. No. 119-1, 139 Stat. 3 (2025); *Salcedo Aceros*, No. 3:25-cv-06924-EMC, 2025 U.S. Dist. LEXIS 179594, at *27-28. Specifically, pursuant to the LRA amendments, people charged as inadmissible pursuant to § 1182(a)(6) (the inadmissibility ground for presence without admission) or § 1182(a)(7) (the inadmissibility ground for lacking valid documentation to enter the United States) and who have been arrested, charged with, or convicted of certain crimes are subject to § 1226(c)'s mandatory detention provisions. *See* 8 U.S.C. § 1226(c)(1)(E). By including such individuals under § 1226(c), Congress further clarified that § 1226(a) covers persons charged under § 1182(a)(6) or (a)(7). In other words, if someone is only charged as inadmissible under § 1182(a)(6) or (a)(7) and the additional crime-related provisions of § 1226(c)(1)(E) do not apply, then § 1226(a) governs that person's detention. *See Rodriguez Vazquez v. Bostock*, No. 3:25-CV-05240-TMC, 2025 WL 1193850, at *14 (W.D. Wash. June 6, 2025), explaining these amendments explicitly provide that § 1226(a) covers people like Petitioner-Plaintiff because the "'specific exceptions' [in the LRA] for inadmissible noncitizens who are arrested, charged with, or convicted of the enumerated crimes logically leaves those inadmissible noncitizens not criminally implicated under Section 1226(a)'s default rule for discretionary detention."); *Diaz Martinez v. Hyde*, 2025 WL 2084238, at *7 (D. Mass. July 24, 2025) ("if, as the Government argue[s], . . . a non-citizen's inadmissibility were alone already sufficient to mandate detention under section 1225(b)(2)(A), then the 2025 amendment would have no effect." 2025 WL 2084238, at *7; *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at *7 (D. Mass. July 7, 2025) (similar). *See also Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010) (observing that a statutory exception would be unnecessary if the statute at issue did not otherwise cover the excepted conduct).

In sum, section 1226's plain text demonstrates that § 1225(b)(2) should not be read to apply to everyone who is in the United States "who has not been admitted." Section 1226(a) covers those who are present within and residing within the United States and who are not at the border seeking admission. The text of § 1225 reinforces this interpretation. As the Supreme Court recognized, § 1225 is concerned "primarily [with those] seeking entry," *Jennings v. Rodriguez*, 583 U.S. 281, 297 (2018), i.e., cases "at the Nation's borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible," *id.* at 287.

Paragraphs (b)(1) and (b)(2) in § 1225 reflect this understanding. To begin, paragraph (b)(1)—which concerns "expedited removal of inadmissible arriving [noncitizens]"—encompasses only the "inspection" of certain "arriving" noncitizens and other recent entrants the Attorney General designates, and only those who are "inadmissible under section 1182(a)(6)(C) or § 1182(a)(7)." 8 U.S.C. § 1225(b)(1)(A)(i). These grounds of inadmissibility are for those who misrepresent information to an examining immigration officer or do not have adequate documents to enter the United States. Thus, subsection (b)(1)'s text demonstrates that it is focused only on people arriving at a port of entry or who have recently entered the United States and not those already residing here. Paragraph (b)(2) is similarly limited to people applying for admission when they arrive in the United States. The title explains that this paragraph addresses the "[i]nspection of other [noncitizens]," i.e., those noncitizens who are "seeking admission," but who (b)(1) does not address. *Id.* § 1225(b)(2), (b)(2)(A). By limiting (b)(2) to those "seeking admission," Congress confirmed that it did not intend to sweep into this section individuals like Petitioner-Plaintiff, who have already entered, were deemed subject to § 1226(a), and are now residing in the United States. An individual submits an "application for admission" only at "the moment in time when the immigrant actually applies for admission into the United States." *Torres v. Barr*, 976 F.3d 918, 927 (9th Cir. 2020) (en banc). Indeed, in *Torres*, the en banc Court of Appeals rejected the idea that § 1225(a)(1) means that 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). That holding is instructive here too, as only those who take affirmative acts, like submitting an "application for admission," are those who can be said to be "seeking admission" within § 1225(b)(2)(A). Otherwise, that language would serve no purpose, violating a key rule of statutory construction. *See Shulman*, 58 F.4th at 410–11.

Furthermore, subparagraph (b)(2)(C) addresses the "[t]reatment of [noncitizens] arriving from contiguous territory," i.e. those who are "arriving on land." 8 U.S.C. § 1225(b)(2)(C) (emphasis added). This language further underscores Congress's focus in § 1225 on those who are arriving into the United States—not those already residing here. Similarly, the title of § 1225 refers to the "inspection" of "inadmissible arriving" noncitizens. *See Dubin v. United States*, 599 U.S. 110, 120–21 (2023) (emphasis added) (relying on section title to help construe statute).

Finally, the entire statute is premised on the idea that an inspection occurs near the border and shortly after arrival, as the statute repeatedly refers to "examining immigration officer[s]," 8 U.S.C. § 1225(b)(2)(A), (b)(4), or officers conducting "inspection[s]" of people "arriving in the United States," id. § 1225(a)(3), (b)(1), (b)(2), (d); *see also King v. Burwell*, 576 U.S. 473, 492 (2015) (looking to an Act's "broader structure . . . to determine [the statute's] meaning").

Respondent-Defendant's new interpretation of § 1225(b)(2) ignores all this and instead focuses on the definition of "applicant for admission" at § 1225(a)(1) (*see* Opp. at 4). But as the Ninth Circuit has explained, "when deciding whether language is plain, [courts] must read the words in their context and with a view to their place in the overall statutory scheme." *San Carlos Apache Tribe v. Becerra*, 53 F.4th 1236, 1240 (9th Cir. 2022) (internal quotation marks omitted). Here, that context underscores that the definition in (a)(1) is limited by other aspects of the statute to those who undergo an initial inspection at or near a port of entry shortly after arrival and are mandatorily detained—and that it does not apply to those who were released under § 1226(a) and have been living in the United States for years.

Significantly, in deeming that all noncitizens who entered without inspection are necessarily encompassed by the mandatory detention provision at § 1225(b)(2), Respondent-

Defendants ignore that the provision does not simply address applicants for admission. Instead, the language "applicant for admission" in (b)(2)(A) is further qualified by clarifying the subparagraph applies only to those "seeking admission"—in other words, those who have applied to be admitted or paroled. The interpretation ignores this text, just as it ignores the statutory language in § 1226 that expressly encompasses persons who have entered the United States and are present without admission. Thus, Petitioner-Plaintiff prevails regardless of the scope of § 1225(a)(1)'s definition of "applicant for admission." This is because classification as an "applicant for admission," is not sufficient to render someone subject to mandatory detention under § 1225(b)(2). The "applicant for admission" must also be "seeking admission," and that is clearly not the case for Petitioner-Plaintiff.

Legislative History

The legislative history of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. No. 104-–208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585, also supports a limited construction of § 1225 and the conclusion that § 1226(a) applies to Petitioner-Plaintiff. In passing the Act, Congress was focused on the perceived problem of recent arrivals to the United States who did not have documents to remain. *See* H.R. Rep. No. 104- 469, pt. 1, at 157–58, 228–29; H.R. Rep. No. 104-828, at 209. Notably, Congress did not say anything about subjecting all people present in the United States after an unlawful entry to mandatory detention if arrested. This is important, as prior to IIRIRA, people like Petitioner-Plaintiff were not subject to mandatory detention. *See* 8 U.S.C. § 1252(a)(1) (1994) (authorizing Attorney General to arrest noncitizens for deportation proceedings, which applied to all persons physically present within the United States). Had Congress intended to make such a monumental shift in immigration law (potentially subjecting millions of people to mandatory detention), it would have explained so or spoken more clearly. *See Whitman v. Am. Trucking*

Ass'ns, 531 U.S. 457, 468–69 (2001). But to the extent it addressed the matter, Congress explained precisely the opposite, noting that the new § 1226(a) merely "restates the current provisions in [INA] section 242(a)(1) regarding the authority of the Attorney General to arrest, detain, and release on bond a[] [noncitizen] who is not lawfully in the United States." H.R. Rep. No. 104-469, pt. 1, at 229 (emphasis added); see also H.R. Rep. No. 104-828, at 210 (same).

Longstanding Agency Practice

DHS's long practice of considering people like the Petitioner-Plaintiff as detained under §1226(a) further supports this reading of the statute. Typically, as they did in the case of Petitioner-Plaintiff, DHS issues a Form I-286, Notice of Custody Determination, or Form I-200 stating that the person is detained under § 1226(a) or has been arrested under that statute. This decision to invoke § 1226(a) is consistent with longstanding practice. For decades, and across administrations, DHS has acknowledged that § 1226(a) applies to individuals who are present without admission after entering the United States unlawfully, but who were later apprehended within the United States long after their entry. Such a longstanding and consistent interpretation "is powerful evidence that interpreting the Act in [this] way is natural and reasonable." *Abramski v. United States*, 573 U.S. 169, 203 (2014) (Scalia, J., dissenting); *see also Bankamerica Corp. v. United States*, 462 U.S. 122, 130 (1983) (relying in part on "over 60 years" of government interpretation and practice to reject government's new proposed interpretation of the law at issue).

Indeed, agency regulations have long recognized that people like Petitioner-Plaintiff are subject to detention under § 1226(a). Nothing in 8 C.F.R. § 1003.19(h)—the regulatory basis for the immigration court's jurisdiction—provides otherwise. In fact, EOIR confirmed that § 1226(a) applies to Petitioner-Plaintiff when it promulgated the regulations governing immigration courts and implementing § 1226 decades ago. Specifically, EOIR explained that "[d]espite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible for bond and bond redetermination." 62 Fed. Reg. at 10323.3. 8 C.F.R. § 235.3 also describes Section 1225(b)(2) as applying to "any arriving alien who appears to the inspecting officer to be inadmissible." (Emphasis added.) *Salcedo Aceros*, No. 3:25-cv-06924-EMC at *17. The regulation thus contemplates that "applicants seeking admission" are a subset of applicants "roughly interchangeable" with "arriving aliens." *Id.* (citing *Martinez v. Hyde*, No. CV 25-11613-BEM, 2025 WL 2084238, at *6 (D. Mass. July 24, 2025)). "Arriving aliens" are specifically defined by regulation as applicants for admission "coming or attempting to come into the United States at a port-of-entry." 8 C.F.R. § 1.2. This does not describe Petitioner-Plaintiff, whose Notice to Appear marks him as an "alien present in the United States who has not been admitted or paroled" and not an "arriving alien."

In sum, § 1226 governs this case. Section 1225 and its mandatory detention provision applies only to individuals arriving in the United States as specified in the statute, while § 1226 applies to those who have previously entered without admission, were released under § 1226(a), and are now present and residing in the United States.

IV. SUBSTANTIVE DUE PROCESS

1. *Petitioner-Plaintiff's motion for a temporary restraining order and preliminary injunction argues that Petitioner-Plaintiff's detention violates the substantive due process clause. ECF 4 at 12–14. However, on July 29, 2025, the Court ordered Petitioner-Plaintiff be released from detention. ECF 6.*

    i. Petitioner-Plaintiff can maintain a substantive due process claim if he is released from custody and not in detention. In *Martinez Leiva*, the petitioner's substantive due process claim was based on his excessively prolonged detention without a bond hearing. *See* No. 23-cv-2027, 2023 WL 3688097, at *17 (N.D. Cal. May 26, 2023). Here, however, Petitioner-Plaintiff's substantive due process claim is premised on a different basis: the arbitrary revocation of his parole (release on recognizance) status. *See Morrissey v. Brewer*, 408 U.S. 471, 482 (1972). When immigration officials decided to release Petitioner-Plaintiff at the border under 1226(a), he "gained a liberty interest in h[is] continued freedom. *See Salcedo Aceros*, No. 3:25-cv-06924-EMC, 2025 U.S. Dist. LEXIS 179594, at *17. Although the petitioner in *Martinez Leiva* also had a liberty interest in remaining free before he was detained, he was subject to mandatory detention under 8 U.S.C. § 1226(c) and therefore did not have a basis to challenge his detention until it became excessively prolonged. *Demore v. Kim*, 538, 531 U.S. 510 (2003); *Zadvydas v. Davis*, 533 U.S. 678, 696, 121 S. Ct. 2491, 150 L. Ed. 2d 653 (2001). In contrast, Petitioner-Plaintiff was never subject to mandatory detention for the reasons above. As such, he does not have this limitation on his constitutional claims. *See id.*

ii. The Court need not weigh the five factors in *Doe v. Becerra*, 732 F. Supp. 3d 1071, 1080 (N.D. Cal. May 2, 2024) in this case because Petitioner-Plaintiff is challenging the revocation of his parole status under *Morrissey* and not alleging that his detention was excessively prolonged, as in *Martinez Leiva*. The proper framework for this case is to (1) determine whether Petitioner-Plaintiff has a liberty interest based on his release under 1226(a) and, if so, (2) apply *Mathews v. Eldridge* 424

U.S. 319 (1976) to determine what procedures he is due to protect that interest. *See, e.g., Hernandez v. Wofford*, 2025 U.S. Dist. LEXIS 162801, at *11-16 (E.D. Cal, Aug. 21, 2025).

Date: September 18, 2025

/s/ Jordan Weiner
Jordan Weiner