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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

)
JONATHAN ALEJANDRO NORORIS) **Case No. 2:25-cv-2885**
ESCOBAR,)
Petitioner,) **REPLY TO RESPONDENT'S**
v.) **OPPOSITION TO PETITIONER'S**
) **EX PARTE APPLICATION FOR**
Todd Lyons, Acting Director,) **TEMPORARY RESTRAINING**
Immigration Customs and Enforcement;) **ORDER.**
)
and Ernesto Santacruz, Jr., Field Office)
Acting Director for Enforcement and)
Removal Operation)
)
Respondents.)

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TABLE OF AUTHORITIES

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Statutes

<u>8 U.S.C. § 1225(b)(2)(A)</u>	
<u>8 U.S.C. § 1226(a)</u>	
<u>8 U.S.C. § 1252(b)(9)</u>	

I. ARGUMENT

A. Jurisdiction

Respondents’ assertion that 8 U.S.C. § 1252(b)(9) deprives this Court of jurisdiction is misplaced and directly contradicted by the very authority they rely upon. In *Chavez v. Noem*, Case No. 3:25-cv-02325-CAB-SBC (S.D. Cal. Sept. 24, 2025) —the same case cited in Respondents’ Opposition — the Hon. Cathy Ann Bencivengo explicitly held that § 1252(b)(9) “poses no jurisdictional bar” to a detainee’s challenge regarding the statutory basis of detention. Judge Bencivengo explained that the Supreme Court in *Jennings v. Rodriguez*, 583 U.S. 281 (2018), confirmed that § 1252(b)(9) does not preclude judicial review of detention claims brought under § 1226, because such claims do not challenge the government’s authority to remove but instead the legality of the detention itself. Likewise here, Petitioner does not contest ICE’s authority to place him in proceedings or to charge him under the INA; rather, he challenges DHS’s improper classification of his custody under § 1225(b)(2) instead of § 1226(a). Following *Jennings* and *Chavez*, this Court retains jurisdiction to review Petitioner’s statutory claim and to enjoin unlawful detention pending adjudication.

B. Petitioner is Entitled to Injunctive Relief

1- Petitioner has been Able to Show a Likelihood of Success on the Merits

Respondents contend that Petitioner is properly detained under § 1225(b)(2) and therefore ineligible for a bond hearing. However, Petitioner is likely to succeed on the merits because his custody is governed by § 1226, not § 1225(b)(2). This position is consistent with the statutory framework, Congress’s intent when enacting the detention provisions, and longstanding agency practice applying § 1226 to similarly situated noncitizens for decades.

a. Petitioner Must not be detained under §1225. §1226 Applies to Petitioner

§ 1226(a) “applies to aliens “arrested and detained pending a decision” on removal. 8 U.S.C. § 1226(a).

Respondents’ own opposition concedes that § 1226(a) “applies to aliens ‘arrested and detained pending a decision’ on removal.” (Opp’n at 10 line 3-4.) Petitioner fits squarely within that description. He was arrested pursuant to a warrant—specifically, Form I-200, Warrant for Arrest of Alien—executed by DHS officers on August 8, 2025 (*See Avendano’s Declaration, Exhibit L*). This fact alone distinguishes him from individuals detained under § 1225(b), which, as the Board explained in *Matter of Q. Li*, 29 I&N Dec. 69, 69 (BIA 2025), applies only to “an applicant for admission who is arrested and detained without a warrant while

1 arriving in the United States.” Because Petitioner was arrested with a warrant and
2 placed in removal proceedings after years of residence inside the United States, his
3 custody is governed by § 1226(a), not § 1225(b). Respondents’ own characterization
4 of § 1226 therefore confirms that Petitioner is detained under the wrong statutory
5 authority.

6 Respondents cite Matter of Yajure Hurtado, 29 I&N Dec. 216 (BIA 2025), for
7 the proposition that Immigration Judges lack authority to consider bond for
8 individuals who entered the United States without admission and are therefore
9 subject to mandatory detention under § 1225(b)(2)(A). However, this new
10 interpretation is plainly inconsistent with the statutory framework and decades of
11 agency practice applying § 1226(a) to individuals like Petitioner. For years, the
12 Department of Homeland Security and the legacy INS uniformly treated noncitizens
13 apprehended after entry—regardless of whether they were charged as inadmissible
14 under § 212(a)(6)(A)(i)—as detainees under § 1226(a), entitled to individualized
15 bond redetermination hearings.

16 Petitioner’s detention under § 1225(b)(2)(A) violates the plain language of the
17 Immigration and Nationality Act. Section 1225(b) governs the inspection and
18 detention of applicants for admission, i.e., individuals who have not yet entered the
19 United States. In contrast, § 1226(a) applies to those who, like Petitioner, previously

1 entered and now reside in the country pending removal proceedings. Congress
2 explicitly provided that such individuals may be detained or released on bond or
3 conditional parole under § 1226(a). By retroactively reclassifying long-term
4 residents as “arriving aliens,” Respondents seek to expand mandatory detention far
5 beyond the scope intended by Congress and contrary to decades of settled agency
6 interpretation.

7 Accordingly, Petitioner’s continued detention under § 1225(b)(2)(A) is
8 unlawful. He respectfully seeks a writ of habeas corpus directing Respondents to
9 release him unless they provide a bond hearing under § 1226(a) within seven days.

10 **b. Congress Intent**

11 Congress’s purpose in enacting § 1225 under IIRIRA. While Congress sought
12 to correct the limited “anomaly” affecting *lawful entrants* seeking inspection at ports
13 of entry, it did not intend to erase the long-standing statutory distinction between
14 arriving aliens and those already residing within the United States. As mentioned
15 before, the legislative history of the Illegal Immigration Reform and Immigrant
16 Responsibility Act of 1996 supports the conclusion that § 1226(a)—not § 1225—
17 applies to individuals like Petitioner. Congress was focused on the perceived
18 problem of *recent arrivals* without documents, not on subjecting all people present
19 in the United States after an unlawful entry to mandatory detention. Had Congress

1 intended to make such a monumental shift potentially subjecting millions of long-
2 term residents to mandatory detention it would have done so clearly. Moreover, any
3 contrary interpretation would yield absurd results, transforming every past parolee
4 regardless of years of residence, ICE supervision, or procedural posture into a
5 perpetual “arriving alien” deprived of bond jurisdiction. Such an outcome
6 contradicts both the statutory framework and the congressional intent reflected in
7 IIRIRA’s legislative history.

8 **c. Prior Agency Practices**

9 Respondents argues that under *Loper Bright Enterprises v. Raimondo*, 603
10 U.S. 369 (2024), and *Skidmore v. Swift & Co.*, 323 U.S. 134 (1944), the persuasive
11 weight afforded to agency interpretations depends on their reasoning, consistency,
12 and thoroughness. Yet that principle cannot shield the government when the
13 agency’s current interpretation violates constitutional rights. Specifically the Fifth
14 amendment’s guarantee of due process. For decades, the agency uniformly applied
15 § 1226(a) to individuals apprehended after entering the United States providing
16 access to bond hearings before an Immigration Judge. While *Loper Bright* limits
17 judicial deference, it does not permit courts to defer to agency interpretations that
18 produce unconstitutional results. Longstanding agency practice is entitled to respect
19 precisely because it comports with due process principles; the current interpretation

1 does not. This Court therefore has both the authority and the duty to reject an
2 interpretation that deprives Petitioner of a meaningful opportunity to be heard before
3 continued detention.

4 **2- Balance of Hardships Favors Petitioner**

5 Respondents, citing Judge Cathy Ann Bencivengo's order in *Chavez v. Noem*,
6 contend that Petitioner has not raised "serious questions going to the merits." Yet
7 Petitioner has shown precisely that. Serious questions exist regarding whether §
8 1225(b)(2)(A)—which governs individuals seeking admission at the Nation's
9 borders and ports of entry—may lawfully be applied to a person like Petitioner, who
10 has already entered and resided in the United States for years. As the Supreme Court
11 explained in *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018), the mandatory
12 detention scheme of § 1225 applies "at the Nation's borders and ports of entry, where
13 the Government must determine whether a [noncitizen] seeking to enter the country
14 is admissible." Petitioner, by contrast, was arrested on a warrant inside the United
15 States, after three years of residence, and has no criminal convictions. His detention
16 is therefore governed by § 1226(a), which provides for discretionary bond review.
17 The hardship to Petitioner—continued indefinite detention without judicial
18 oversight—far outweighs any speculative administrative inconvenience to the

1 government in providing a prompt bond hearing. Accordingly, the balance of
2 equities and the public interest weigh decisively in Petitioner's favor

3 Respondents further argue that the government has a compelling interest in
4 the steady enforcement of immigration laws and that judicial intervention would
5 disrupt the status quo. That position ignores the fundamental principle that the
6 enforcement of immigration laws must still conform to the Constitution. Judicial
7 intervention here is not an intrusion into executive discretion—it is a necessary
8 check on an agency action that violates Petitioner's constitutional rights. The
9 government's interest in efficient enforcement cannot outweigh Petitioner's Fifth
10 Amendment right to due process and his corresponding right to a bond hearing when
11 detained within the United States under § 1226(a). Upholding these constitutional
12 safeguards preserves, rather than disrupts, the rule of law.

13 II. CONCLUSION

14 For the reasons stated above, this Court has jurisdiction to review Petitioner's
15 claims, and the record demonstrates that Petitioner is likely to succeed on the
16 merits. The government's reliance on § 1225(b)(2)(A) to justify Petitioner's
17 detention is contrary to the statutory text, congressional intent, and decades of
18 consistent agency practice applying § 1226(a) to similarly situated individuals.
19 The agency's abrupt departure from that practice violates the Fifth Amendment's

1 guarantee of due process and deprives Petitioner of the bond hearing to which he
2 is entitled. Petitioner was arrested on a warrant, inside the United States, after
3 living in the country for more than three years, and he has no criminal
4 convictions. The balance of hardships and the public interest both weigh heavily
5 in Petitioner's favor. Accordingly, Petitioner respectfully requests that this
6 Honorable Court grant the Temporary Restraining Order and issue a writ of
7 habeas corpus directing Respondents to release Petitioner unless a bond hearing
8 under § 1226(a) is provided within seven days.

9
10 November 4, 2025

11
12 Respectfully submitted,

13
14 */s/ Marcelo Avendano*
15 R. Marcelo Avendano, Esq.

16 Attorney for Petitioner
17

18 * The undersigned, counsel of record for the Petitioner certifies that this brief
19 contains 1,508 words, which complies with the word limit of L.R. 11-6.1.