IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

Jaime SOLAYA CLAVERO

Petitioner,

v.

Jacob WELSH, *et al.*,

Respondents.

Case No: 5:25-cv-03278-JWL

PETITIONER'S TRAVERSE IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION[1]

Respondents urge this Court to adopt a position that has been overwhelmingly rejected by courts throughout this circuit and across the country – in fact, at least 373 judges in over 3,500 cases have rejected it, as opposed to a lopsided minority of 28 judges who have agreed with Respondents' position. *See* Kyle Cheney, *Even Trump's own appointees are ruling against ICE's mass detention strategy*, Politico (Feb. 12, 2026), https://www.politico.com/news/2026/02/12/donald-trump-judges-mandatory-detention-rulings-00778256.

Ultimately, the strongest refutation of Respondents' arguments comes from their own brief. They claim Mr. Solaya is subject to mandatory detention under 8 U.S.C. § 1225(b) while admitting that in 2022 he was released on his own recognizance, a form of relief not authorized under § 1225(b) and available only under § 1226(a). Dkt. 6 at 3; *Singh v. Taylor*, -- F. Supp. 3d --, 2026

[1] Petitioner does not dispute the factual allegations in the Response. Since this case presents purely legal issues, and since there is an abundant body of case law on those issues, Petitioner believes this matter can be decided on the briefs without the need for a hearing.

WL 360913, at *1 n.2 (W.D. Tex. Feb. 9, 2026). In 2022, Respondents determined that Mr. Solaya was neither a danger nor a flight risk and released him; since then, he has lived at liberty in this country for more than three years. As numerous courts around the country have found, neither courts nor DHS can turn back time and require the mandatory detention of a person previously found to be subject only to discretionary detention. Furthermore, courts have rejected DHS's post-hoc attempts to reclassify a person's detention status once that person has previously been released on his own recognizance.

For these reasons, and the reasons that follow, the Court should grant Mr. Solaya's Petition and order Respondents to conduct a bond hearing under § 1226(a) or order his immediate release under his preexisting order of release on recognizance. *Singh v. Baltazar*, -- F. Supp. 3d --, 2026 WL 352870, at *3 (D. Colo. Feb. 9, 2026).

ARGUMENT

I. Section 1226(a) Governs Petitioner's Detention and Affords Him Bond.

A. Section 1226(a) provides the default detention authority for individuals arrested in the United States for a removal proceeding.

Section 1226 provides the "default rule" for noncitizens who are apprehended "inside the United States" and detained for removal proceedings. *Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018). The plain language of § 1226(a) provides that DHS "may" arrest and detain a noncitizen "pending a decision on whether the alien is to be removed from the United States" while also permitting the noncitizen's release "on bond" or other conditions. 8 U.S.C. § 1226(a). By statute, removal proceedings cover people, like Petitioner, who are charged with being inadmissible after entering the country without inspection. *See* 8 U.S.C. § 1229a(a)(1) (directing the immigration judge to "conduct proceedings for deciding the inadmissibility . . . of [a noncitizen]"); *see also* § 1229a(a)(2), (c)(2)(A), & (e)(2)(A) (referring to charges and determinations of inadmissibility).

Given that Congress wrote § 1226 to cover inadmissible noncitizens, it necessarily applies to individuals, like Petitioner, who are charged as inadmissible for being "present in the United States without being admitted or paroled," 8 U.S.C. § 1182(a)(6)(A)(i), and are detained "pending a decision on whether [they will] be removed," *id.* at § 1226(a).

"The historical context in which [§ 1226] was adopted confirms the plain import of its text." *Biden v. Texas*, 597 U.S. 785, 804 (2022) (citing *Niz-Chavez v. Garland*, 593 U.S. 155, 165 (2021)). When it enacted the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA") of 1996, Pub. L. No. 104–208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585 in 1996, Congress maintained the basic detention framework that had long provided bond to people who had entered without inspection and were arrested for a deportation proceeding. Congress did so by replacing the language providing for detention and bond "[p]ending a determination of deportability" in the predecessor statute, 8 U.S.C. § 1252(a) (1995), with "pending a decision on whether the alien is to be removed" in § 1226. Through this change, Congress thus made clear that noncitizens who entered without inspection and whom IIRIRA reclassified as inadmissible rather than deportable would remain eligible for bond during removal proceedings. *See* H.R. Rep. No. 104-469, pt. 1, at 229 (explaining that § 1226(a) "restates" the provisions in former § 1252(a)(1) (1995) providing for "release on bond" to people in the country (including those who entered without inspection)); *accord* H.R. Rep. No. 104-828, at 210. Had Congress intended for § 1226 to apply only to deportable noncitizens, it could have simply retained the prior language referring to "deportability," as it did in other sections of the statute. *See, e.g.*, 8 U.S.C. § 1229c(a)(1) (retaining reference to "deportable").

B. Section 1226(c) reinforces the argument that § 1226 provides people like Petitioner with access to bond.

Section 1226(c) confirms the applicability of § 1226 to inadmissible noncitizens like Petitioner through the statute's structure. Section 1226(c) is an exception to § 1226's general release authority. Section 1226(c) carves out a subset of inadmissible noncitizens from bond eligibility under § 1226(a) where they are charged with removal on certain criminal or terrorism-based grounds, instead subjecting them to mandatory, no-bond detention. *See* 8 U.S.C. §§ 1226(c)(1)(A) & (D), 1226(c)(4); *see also* 8 U.S.C. § 1226(a) (permitting release on bond "[e]xcept as provided in subsection (c)"); *Nielsen v. Preap*, 586 U.S. 392, at 397, 409 (2019).

Section 1226(c) is thus the exception that proves the rule: § 1226(a) generally affords bond to inadmissible noncitizens—including those, like Petitioner, who entered the country without inspection—*unless* the exception in § 1226(c) applies. Indeed, if § 1226(a) did not generally provide bond to inadmissible noncitizens, Congress would have had no need to exclude a subset of them from bond-eligibility under § 1226(a) in the first place. *See Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010) (the fact that Congress has created specific exceptions "proves" that the statute applies in general).

Congress confirmed this point just last year when it enacted the Laken Riley Act ("LRA"). The LRA added a new ground of mandatory detention to § 1226(c) that specifically targets noncitizens who entered the country without inspection if they are also charged with, arrested for, convicted of, or admit to committing certainly newly-added crimes. *See* 8 U.S.C. § 1226(c)(1)(E). The LRA thus makes it clear that § 1226(c) is the exception to the general rule that noncitizens charged as inadmissible for entering the country without inspection are eligible for bond under § 1226(a). Otherwise, there would have been no need for Congress to exclude a subset of those entrants from § 1226(a) bond eligibility. *See, e.g., Lopez Campos v. Raycraft*, 797 F. Supp. 3d 771,

783 (E.D. Mich. 2025). As courts have held, reading § 1225(b) to cover all inadmissible noncitizens would render portions of the Laken Riley Act superfluous. *Id.*

C. Executive Branch interpretation and practice confirm that § 1226 applies to Petitioner.

Contemporaneous Executive Branch interpretation and longstanding practice also support reading § 1226 to govern Petitioner's detention. In March 1997, just months after IIRIRA's enactment, DOJ promulgated regulations reaffirming that noncitizens "who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond." 62 Fed. Reg. at 10,323. For three decades across five administrations, the government interpreted § 1226 to provide access to bond hearings to those placed into removal proceedings for having entered without inspection.

Here, "the longstanding practice of the government can"—and should—"inform [the Court's] determination of what the law is." *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 386 (2024) (cleaned up). The government's contemporaneous interpretation of the statute and adherence to it for decades both provides "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), and casts serious doubt on the government's departure from the universally-held understanding. *See, e.g.*, *Bankamerica Corp. v. United States*, 462 U.S. 122, 130 (1983) (relying in part on "over 60 years" of government's interpretation and practice to reject its new proposed interpretation of the law).

Furthermore, "Congress' failure to repeal or revise in the face of such administrative interpretation . . . constitute[s] persuasive evidence that that interpretation is the one [Congress] intended." *Zemel v. Rusk*, 381 U.S. 1, 11 (1965). Congress had multiple opportunities over three decades to correct the Executive's supposed misunderstanding of the scope of § 1226, including

in post-IIRIRA legislation addressing immigration benefits and procedures, the restructuring of the immigration agencies, and judicial review of immigration matters. Yet it never questioned the government's application of § 1226 to noncitizens like Petitioner. Indeed, through the LRA, it enacted legislation just last year *confirming* that application.

D. Petitioner Is Being Detained Pursuant to 8 U.S.C. § 1226(a), as Even Respondents Inadvertently Concede.

Petitioner was present in the United States for three years before his re-apprehension by ICE, which means "his detention is governed by 8 U.S.C. § 1226(a), which allows for the release of noncitizens on bond," *Puga v. Assistant Field Ofc. Dir.*, 2025 WL 2938369, at *3 (S.D. Fla. Oct. 15, 2025), not § 1225(b)(2), applicable to noncitizen "applicant[s] for admission" to the United States. § 1225(b)(2)(A).

In fact, Respondents inadvertently concede that Petitioner is detained pursuant to § 1226(a). They note that "Petitioner was arrested by Border Patrol but was served an I-220A and released on his own recognizance." Dkt. 6 at 3. But "[p]eople detained under Section 1225(b) are ineligible for release on recognizance." *Minarcaja Concha v. Lyons*, -- F. Supp. 3d --, 2026 WL 215417, at *13 (S.D.N.Y. Jan. 28, 2026) (citing *Jennings*, 583 U.S. at 300, which concludes that, other than parole, "there are *no* other circumstances under which aliens detained under § 1225(b) may be released" (emphasis in original)). The fact that Mr. Solaya was released on his own recognizance is "strong evidence" that he is detained pursuant to § 1226, not § 1225. *Singh v. Bondi*, 2025 WL 3029524, at *5 (S.D. Ind. Oct. 30, 2025). This is because "[i]f [Mr. Solaya] was deemed an applicant for admission by virtue of his entry into the United States, the government was statutorily obligated to detain him under § 1225(b) at the time he was initially apprehended. It did not do so. Instead, [Mr. Solaya] was released on his own recognizance, subject to conditions of supervision, based expressly on § 1226. In fact, § 1226 was the *only* basis cited for [Mr.

Solaya's] release. Under § 1225, the government's options were limited to removal or detention pending review by an asylum officer. The fact that the government's release of [Mr. Solaya], on his own recognizance, was based on § 1226 is strong evidence that he currently remains subject" to that statute. *Id.*; *see also Huaman-Rodriguez v. Lynch*, 2025 WL 3267768 (W.D. Mich. Nov. 24, 2025) (similar); *Singh*, 2026 WL 362870, at *2-3 (similar).

Courts have rejected DHS's later attempt to reclassify a person released under § 1226(a) as suddenly being detained under § 1225(b), finding that the prior determination that a person was being released under § 1226(a) should be taken "at face value." *See Pizarro Reyes v. Raycraft*, 2025 WL 2609425, at *6 (E.D. Mich. Sept. 9, 2025). Post-hoc justifications purporting to change the basis for an individual's detention deserve no credit. *Beltran Barrera v. Tindall,* 2025 WL 2690565, at *4 (W.D. Ky. Sept. 19, 2025); *Singh v. Lewis*, 2025 WL 2699219, at *5 (W.D. Ky. Sept. 22, 2025); *Lopez-Campos*, 797 F. Supp. 3d at 782-83. As courts have found, neither DHS nor a court can turn back the clock to find that a petitioner previously released under § 1226(a) is now suddenly subject to mandatory detention under § 1225. *De Andrade v. Moniz*, 802 F. Supp. 3d 325, 332-33 (D. Mass. 2025) ("In substance, the government asks the Court to turn a blind eye to the circumstances of petitioner's release and the events of the past four years … But petitioner has been residing in Massachusetts since 2021 … He was already conditionally paroled into the United States. And he is still here … The government [] cannot now turn back the clock, and neither can the Court.").

Nearly every court in this circuit to consider the question (including every judge in the District of Colorado and all but one in the District of New Mexico) has found that § 1225 does not apply to individuals like Mr. Solaya. *Garcia Abanil v. Baltazar*, 25-cv-4029, 2026 WL 100587 (D. Colo. Jan. 14, 2026) (Martinez, J.); *Garcia-Perez v. Guadian*, 25-cv-4069, 2026 WL 89613 (D.

Colo. Jan. 13, 2026) (Brimmer, C.J.); *Trejo Trejo v. Baltazar*, 25-cv-4026, 2026 WL 63431 (D. Colo. Jan. 8, 2026) (Crews, J.); *Briales-Zuniga v. Baltazar*, 25-cv-3439, 2026 WL 35227 (D. Colo. Jan. 6, 2026) (Wang, J.); *Jimenez Reyes v. Olson*, 2:25-cv-622-JRS-MG, 2025 WL 3765963 (S.D. Ind. Dec. 30, 2025); *Rico v. Baltazar*, 25-cv-3943, 2025 WL 3640366 (D. Colo. Dec. 16, 2025) (Sweeney, J.); *Facio v. Baltazar*, 25-cv-3592, 2025 WL 3559128 (D. Colo. Dec. 12, 2025) (Chung, J.); *Gutierrez v. Baltasar*, 25-cv-2720, 2025 WL 3251143 (D. Colo. Nov. 21, 2025) (Rodriguez, J.); *Batz Barreno v. Baltasar*, 25-cv-3017, 2025 WL 3190936 (D. Colo. Nov. 14, 2025) (Gallagher, J.); *Galvez Jovel v. Noem*, 1:25-cv-1233, 2026 WL 172734 (D.N.M. Jan. 22, 2026) (Gonzalez, C.J.); *Munoz Teran v. Bondi*, 2:25-cv-1218, 2026 WL 161527 (D.N.M. Jan. 21, 2026) (Riggs, J.); *Uribe v. Noem*, 2:25-cv-1139, 2026 WL 127621 (Urias, J.); *Lopez-Romero v. Lyons*, 2:25-cv-1113, 2026 W 92873 (D.N.M. Jan. 13, 2026) (Strickland, J.); *Melchor-Rios v. Ortiz*, 2:25-cv-1055, 2025 WL 3764775 (D.N.M. Dec. 30, 2025) (Johnson, J.); *Rodriguez-Novoa v. Lyons*, 1:25-cv-1073, Dkt. 25 (D.N.M. Dec. 23, 2025) (Davenport, J.); *Diaz-Cruz v. Dedos*, 1:25-cv-1117, 2025 WL 3628517 (D.N.M. Dec. 12, 2025) (Garcia, J.); *but see Singh v. Noem*, 25-cv-1110, 2026 WL 146005 (D.N.M. Jan. 20, 2026) (Browning, J.) (concluding that § 1225(b) applies to those who have been in the country less than two years or have affirmatively sought admission by filing an asylum application); *see also Pizarro Reyes v. Raycraft*, No. 25-cv-12546, 2025 WL 2609425, at *7 (E.D. Mich. Sep. 9, 2025) ("Finally, the BIA's decision to pivot from three decades of consistent statutory interpretation and call for Pizarro Reyes' detention under § 1225(b)(2)(A) is at odds with every District Court that has been confronted with the same question of statutory interpretation."); *Barco Mercado v. Francis*, -- F. Supp. 3d --, 2025 WL 3295903, at *4 (S.D.N.Y. Nov. 26, 2025) (listing 350 district court decisions rejecting Respondents' position in an appendix).

II. The Court should reject Respondents' attempt to elide the phrase "seeking admission" from § 1225(b).

Section § 1225(b)(2)(A) provides for mandatory detention "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." Thus, "[f]or section 1225(b)(2)(A) to apply, several conditions must be met – in particular, an 'examining immigration officer' must determine that the individual is: (1) an 'applicant for admission'; (2) 'seeking admission'; and (3) 'not clearly and beyond a doubt entitled to be admitted.'" *Lepe v. Andrews*, 801 F. Supp. 3d 1104, 1113 (E.D. Cal. 2025) (citing *Martinez v. Hyde*, 792 F. Supp. 3d 211, 214 (D. Mass. 2025)).

Throughout Respondents' response, they try to elide the phrase "seeking admission" from the statutory requirements, starting with the first page of their brief, where they argue that "Petitioner is considered an applicant for admission in the United States and therefore 'shall be detained' during the pendency of his removal proceedings." Dkt. 6 at 1. Later, they argue that "Petitioner falls squarely within section 1225(b)(2)(A)'s mandatory detention requirement as Petitioner is an 'applicant for admission'," again omitting the requirement that he be "seeking admission." *Id.* at 12. Indeed, Respondents attempt to argue that "every 'applicant for admission' is inherently and necessarily 'seeking admission.'" *Id.* at 15. But courts have rejected such an interpretation:

> The government argues section 1225(b)(2)(A) applies to all noncitizens living in this county who did not lawfully enter, regardless of how long they have lived here or whether they ever took any affirmative step to seek admission. The government's proposed interpretation of the statute ignores the plain meaning of the phrase "seeking admission." *Martinez*, – F. Supp. 3d at –, 2025 WL 2084238, at *6. "Seeking" means "asking for" or "trying to acquire or gain." Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/seeking. And the use of a present participle, "seeking," "necessarily implies some sort of present-tense action." *Martinez*, – F. Supp. 3d at –, 2025 WL 2084238, at *6. The term

> "admission" is defined as "the lawful entry of the alien into the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13)(A). And "entry" has long been understood to mean "a crossing into the territorial limits of the United States." *Hing Sum v. Holder*, 602 F.3d 1092, 1100–01 (9th Cir. 2010) (quoting *Matter of Pierre*, 14 I & N Dec. 467, 468 (1973)). To piece this together, the phrase "seeking admission" means that one must be actively "seeking" "lawful entry." … However, petitioner is not actively "seeking" "lawful entry" because he already entered the United States—thirty-two years ago. If anything, petitioner is seeking to remain in the United States.

Lepe, 801 F. Supp. 3d at 1113. The term "applicant for admission" is a statutorily defined term of art that does not necessarily mean that a person has *applied* for something in a literal sense. *See, e.g., De Jesus Aguilar v. English*, 2025 WL 3280219, at *6-7 (N.D. Ind. Nov. 25, 2025). Nonetheless, Respondents resort to the facile analogy of a person "applying" for admission to college to argue that such a person is necessarily "seeking" admission. Dkt. 6 at 16. A better analogy is the one the court employed in *Lopez Benitez v. Francis*, 795 F. Supp. 3d 475, 489 (S.D.N.Y. 2025):

> [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. As § 1225(b)(2)(A) applies only to those noncitizens who are actively "seeking admission" to the United States, it cannot, according to its ordinary meaning, apply to Mr. Lopez Benitez, because he has already been residing in the United States for several years.

In short, while Mr. Solaya does fall under the statutory category of applicants for admission, he is not "seeking admission" at the border or a port of entry before an "examining immigration officer"; instead, he was admitted under an order of release on recognizance in 2022, lived here for several years, and was re-detained in Salina, Kansas, while not in the act of "seeking admission." Therefore, by the statute's plain language, § 1225(b)(2)(A) does not apply to him.

III. Recent developments in the case law.

Petitioner is aware of the 2-1 decision in *Buenrostro-Mendez v. Bondi*, No. 25-20496, 2026 WL 323330 (5th Cir. Feb. 6, 2026), but respectfully maintains that that decision, which adopts the minority position on this issue, was wrongly decided. Most importantly, that decision is not binding on this Court, and the Tenth Circuit has not yet decided this issue. Moreover, the Fifth Circuit's decision is at odds with a panel of the Seventh Circuit in *Castanon-Nava v. U.S. Dep't of Homeland Sec.*, 161 F.4th 1048, 1060-62 (7th Cir. 2025), which found that the Government was "not likely to succeed on the merits of their argument that" individuals like Mr. Solaya "are subject to mandatory detention under § 1225(b)(2)(A)."

Courts in the Tenth Circuit have rejected *Buenrostro-Mendez. See Singh v. Baltazar,* -- F. Supp. 3d --, 2026 WL 352870 (D. Colo. Feb. 9, 2026); *Carbajal v. Wimmer, et al.* No. 2:26-cv-00093, 2026 WL 353510, at *1–5 (D. Utah Feb. 9, 2026); *Camac-Huanca v.. Noem, et al.*, No. 2:25-cv-01253 KWR-JFR, 2026 WL 357651, at *5 (D.N.M. Feb. 9, 2026). As the *Singh* court explained, *Buenrostro-Mendez* rests on a reading of the statutory text that is inconsistent with the plain language and structure of the INA, particularly insofar as it collapses the distinct statutory terms "seeking admission" and "applicant for admission" into synonymous concepts, contrary to the plain text and structure of the INA. *Id.* at 8–11. The court further rejected the Fifth Circuit majority's willingness to tolerate statutory redundancy, explaining that the better reading gives independent meaning to Congress's chosen language and avoids surplusage altogether. *Id.* at 9–10. Agreeing with the *Buenrostro-Mendez* dissent and the overwhelming majority of district courts nationwide, the court concluded that § 1225 applies to noncitizens actively seeking entry at the border, not to individuals already present in the United States, and that detention authority in such circumstances arises, if at all, under § 1226. *Id.* at 6–7, 11–13.

Finally, to the extent Respondents rely on the BIA's decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), that reliance is misplaced now that a district court has vacated that decision under the Administrative Procedure Act. *Maldonado Bautista v. Santacruz*, 5:25-cv-1873-SSS-BFM, -- F. Supp. 3d --, 2026 WL 468284, at *12 (C.D. Cal. Feb. 18, 2026). As such, whatever authority that case might previously have had, it can now no longer be considered persuasive.

CONCLUSION

For the foregoing reasons and those expressed in the Petition for Writ of Habeas Corpus and Motion for Order to Show Cause, this Court should grant the petition.

Respectfully submitted,

/s/ *Vivianna Tijerino*
Vivianna Inez Tijerino, Esq.
Florida Bar No. 1058346
Garcia & Qayum Law Group, P.A.
3475 West Flagler Street
Miami, FL 33135
(954) 203-7149 Cell
(305) 503-7370 Fax
Vivianna@GQLawGroup.com
Counsel for Petitioner

/s/ James D. Jenkins
James D. Jenkins (KSD #78125)
P.O. Box 6373
Richmond, VA 23230
(804) 873-8528
jjenkins@valancourtbooks.com

CERTIFICATE OF SERVICE

I hereby certify that on February 24, 2026, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, which sent notice of such filing to all parties.

/s/ James D. Jenkins
Counsel for Petitioner