UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

MARIANO LOPEZ JIMENEZ
([redacted]),

Petitioner

v.

KRISTI NOEM, in her official capacity as U.S. Secretary of Homeland Security; PAMELA JO BONDI, in her official capacity as Attorney General of the United States; ROBERT GUADIAN, in his official capacity as Field Office Director, Washington, D.C. Field Office, Immigration and Customs Enforcement; and JEFFREY CRAWFORD, in his official capacity as the Warden for Farmville Detention Center.

Respondents.

Case No. 1:26-cv-116

PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241

INTRODUCTION

1. Petitioner Mariano Lopez Jimenez ("Mr. Lopez") is a native and citizen of Mexico who has resided in the United States since he first entered the country seventeen years ago. He was detained by Immigration and Customs Enforcement in February 2025 and placed in removal proceedings. After being detained, Mr. Lopez was given a bond hearing pursuant to 8 U.S.C. § 1226(a) where an immigration judge ("IJ") denied him bond, finding he presented a danger to the community based on two convictions for driving under the influence ("DUI").
2. The same IJ later awarded him cancellation of removal, holding that he had established the good moral character required to obtain such relief, notwithstanding his two DUI convictions.

Further, the Department of Homeland Security (DHS) issued him his lawful permanent resident (LPR) card a week after the IJ granted cancellation of removal and has not yet sought to rescind that grant through the procedures required by statute and regulation.

3. DHS continues to keep Mr. Lopez detained while it appeals the IJ's order granting cancellation of removal. On September 18, 2025, Mr. Lopez moved for a custody redetermination to argue that changed circumstance justified his release on bond, as he is entitled to do under § 1226(a) and its implementing regulations. Yet, the IJ reversed her previous holding that he was subject to § 1226(a) detention and concluded that she lacked jurisdiction because Mr. Lopez was subject to mandatory detention under § 1225(b)(2).

4. The relief Mr. Lopez seeks through this petition is modest. He simply asks for the opportunity to seek release on bond based on his changed circumstances, specifically by offering evidence of his rehabilitation and efforts to address his alcohol issues while in detention, and his commitment to continue doing so upon his release.

5. As this Court has repeatedly held, individuals like Mr. Lopez Jimenez who entered the United States without inspection and are encountered in the interior of the United States years later are not subject to mandatory detention under § 1225(b)(2). DHS and EOIR's interpretation of its detention authority under § 1225(b)(2) marks a complete departure from the interpretation that the government has embraced since the statute's enactment, DHS's prior practice, Supreme Court precedent, and the statute's plain language.

6. This Court should grant Mr. Lopez's Petition for Writ of Habeas Corpus and order a bond hearing pursuant to § 1226(a).

JURISDICTION AND VENUE

7. This action arises under the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 et seq.

8. This Court has jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and 28 U.S.C. §§ 2201-02 (declaratory relief).

9. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

10. Respondents are currently detaining Mr. Lopez at the Farmville Detention Center, which sits in the Eastern District of Virginia. Venue lies in the judicial district in which Mr. Lopez is detained when he files his petition. 28 U.S.C. § 1391(e); *Rumsfeld v. Padilla*, 542 U.S. 426, 434, 447 (2004).

REQUIREMENTS OF 28 U.S.C. § 2243

11. Under 28 U.S.C. § 2243, a court "entertaining an application for a writ of habeas corpus shall forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant . . . is not entitled thereto." 28 U.S.C. § 2243. If the Court issues an order to show cause, Respondents must file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

12. Habeas corpus is "perhaps the most important writ known to the constitutional law . . . affording as it does a swift and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). "The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application." *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

13. Mr. Lopez, who has resided in the United States since 2008, is unlawfully detained without the opportunity to challenge his continued detention as he has the right to do under § 1226(a)

and its implementing regulations. DHS's application of the mandatory detention provision at 8 U.S.C. § 1225(b)(2) to any individual who has entered the United States without inspection, including Mr. Lopez, has been almost universally rejected by district courts across the country, including this Court.

14. Mr. Lopez requests that the Court issue an Order to Show Cause, and direct Respondents to file a response within three days, given the significant and unlawful restraint on his liberty.

TRANSFER OUTSIDE THE DISTRICT; ALL WRITS ACT

15. The All Writs Act, 28 U.S.C. § 1651(a), empowers the federal courts to "issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law."

16. Courts in this district have recently invoked the All Writs Act to prevent the transfer of individuals detained within the "judicial district unless and until the Court issues a contrary order." *Garcia Guardado v. Lyons*, No. 1:25-cv-1741-MSN-WBP (E.D. Va. Oct. 15, 2025) (citing 28 U.S.C. § 1651; *FTC v. Dean Foods Co.*, 384 U.S. 597, 603 (1966) ("The All Writs Act, 28 U.S.C. § 1651(a), empowers the federal courts to 'issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.'"); *see also Guevara Gomez v. Crawford*, No. 1:25-cv-1781-PTG-LRV (E.D. Va. Oct. 16, 2025).

17. Mr. Lopez requests that this Court invoke the All Writs Act to prevent any transfer out of the Eastern District of Virginia during the pendency of his habeas action, given the strong possibility that he will be ordered to appear at a bond hearing shortly after this Court rules upon the habeas petition. Mr. Lopez's counsel operates primarily in Virginia. Transferring Mr. Lopez out of the district will make it more difficult for Mr. Lopez to coordinate with his

counsel ahead of a bond hearing ordered by the Court. Further, he will incur additional, unnecessary expenses returning home should he be released on bond after being transferred out of state. *See* https://www.tsa.gov/travel/security-screening/identification (listing documents required to board an airplane, which does not include ICE release paperwork); *see also Ozturk v. Trump*, 779 F. Supp. 3d 462, 497 (D. Vt. 2025) (noting that presence in the judicial district where an action is pending "facilitate[s]" the petitioner's "ability to work with [his or] her attorneys, coordinate the appearance of witnesses," and generally present claims related to detention); *Suri v. Trump*, --- F. Supp. 3d ----, 2025 WL 1310745, at *13 (E.D. Va. May 6, 2025).

PARTIES

18. Petitioner Mariano Lopez Jimenez is a native and citizen of Mexico who has been in immigration detention since February 2025. ICE is currently detaining him at Farmville Detention Center in Farmville, Virginia.

19. Respondent Kristi Noem is the Secretary of the Department of Homeland Security. She is responsible for the implementation and enforcement of the INA, and oversees ICE, the agency responsible for Mr. Lopez's detention. Secretary Noem has ultimate custodial authority over Mr. Lopez and is sued in her official capacity.

20. Respondent Pamela Jo Bondi is the United States Attorney General. She has supervisory authority over EOIR, which oversees the immigration courts and the Board of Immigration Appeals. She is sued in her official capacity.

21. Respondent Robert Guadian is the Field Office Director for ICE's Washington D.C. Field Office. He oversees the operation of detention facilities within the Washington D.C. Field Office's area of responsibility, including the Farmville Detention Center. Mr. Guadian is sued

in his official capacity.

22. Respondent Jeffrey Crawford is the Warden of Farmville Detention Center and is the immediate custodian of Mr. Lopez. Mr. Crawford is sued in his official capacity.

EXHAUSTION

23. The failure to exhaust administrative remedies does not bar Mr. Lopez's claims unless "Congress specifically mandates" exhaustion. *Miranda v. Garland*, 34 F.4th 338, 351 (4th Cir. 2022) (1993) (quoting *McCarthy v. Madigan*, 503. U.S. 140, 144 (1992)).

24. Even if the Court were inclined to require exhaustion of administrative remedies as a prudential matter, seeking administrative review of ICE's initial custody determination would be futile and should be excused in this case. *See Carr v. Saul*, 593 U.S. 83, 93 (2021) ("[T]his Court has consistently recognized a futility exception to exhaustion requirements.").

25. Critically, the Board recently issued a precedential decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), adopting the new interpretation of 8 U.S.C. § 1225(b)(2) that DHS announced in its recent July 8, 2025 policy memorandum. *Matter of Yajure Hurtado* holds that noncitizens who entered the United States without inspection at any point are subject to mandatory detention under 8 U.S.C. § 1225(b)(2). Although, as discussed below, this decision is legally erroneous, all immigration judges—including those at the Board of Immigration Appeals—are obligated to apply the Board's published precedent and deny any administrative appeal filed by Mr. Lopez. 8 C.F.R. § 103.10(b).

26. Immigration courts have continued to apply this precedent notwithstanding recent orders from the U.S. District Court for the Central District of California certifying a nationwide class and granting summary judgment in an action for declaratory judgment challenging DHS's and EOIR's erroneous interpretation of the INA. *See Maldonado Bautista v. Santacruz*, No. 5:25-

CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3289861, at *11 (C.D. Cal. Nov. 20, 2025) (order granting partial summary judgment to named Plaintiffs-Petitioners); *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025) (order certifying Plaintiffs-Petitioners' proposed nationwide Bond Eligible Class, incorporating and extending declaratory judgment from Order Granting Petitioners' Motion for Partial Summary Judgment)

27. The immigration court denied Mr. Lopez's request for reconsideration of his bond denial, citing *Matter of Yajure Hurtado*. Mr. Lopez need not go through the futile exercise of seeking an appeal of the Immigration Judge's order that the Board, in its view, is required to deny. *Matter of Yajure Hurtado*. *See Cabrera v. Barr*, 930 F.3d 627, 633 (4th Cir. 2019) ("We agree with . . . our sister circuits. . . that a petitioner has exhausted his administrative remedies when the BIA has issued a definitive ruling on the issue.").

STATEMENT OF FACTS

28. Mr. Lopez entered the United States without inspection in 2008. He has resided continuously in this country ever since. Prior to his detention, Mr. Lopez resided in Culpepper, Virginia with his U.S. citizen wife, and five U.S. citizen children.

29. In February 2025, Mr. Lopez was taken into custody and detained at Farmville Detention Center in Farmville, Virginia. Mr. Lopez moved for a custody redetermination, seeking release on bond pending his removal proceedings. On March 25, 2025, the IJ denied bond, finding that Mr. Lopez posed a danger to the community based on his two convictions for driving under the influence.

30. On July 23, 2025, the IJ held an individual hearing to consider Mr. Lopez's application for cancellation of removal. On August 13, 2025, she issued an oral decision granting his application. *See* Ex. A, Transcript of Oral Decision.

31. Among other things, and in a departure from her previous determination that he presented a danger to the community, the IJ concluded that Mr. Lopez had established the good moral character required to obtain cancellation of removal. *Id.* at 3-7.

32. Specifically, the IJ credited Mr. Lopez's testimony that after his first DUI, he remained sober for about five years until his wife miscarried their two twin babies. *Id.* at 4. The tragedy caused him to relapse and begin drinking again, at which point he received a second DUI nine years after his first arrest. *Id.* In addition to Mr. Lopez's testimony, the IJ noted that Mr. Lopez had completed several courses while in detention to address his substance abuse issues, including: a 12-step recovery program, Student's Guide to Drug and Alcohol Abuse; Adapting to Change; Driving Safety Off-Road Vehicles; Machinery and Vehicular Safety; and Driving Hazard Awareness and Safe Vehicle Operation. *Id.* at 5. Finally, the IJ noted that Mr. Lopez had secured a 30-day placement at the Edge Hill Recovery Program upon his release—a facility that has a 26-week after-care program requiring weekly updates and random urine screens. *Id.*

33. On August 20, 2025, just a week after the IJ's oral decision, DHS approved his Form I-485, Application to Register Permanent Residence or Adjust Status and issued him a Lawful Permanent Resident ("LPR") card. *See* Exs. B-C,

34. Three weeks later, on September 11, 2025, DHS appealed from the IJ's order granting cancellation of removal. It has not taken the steps necessary to rescind its grant of adjustment of status.

35. On September 18, 2025, Mr. Lopez filed a motion for custody redetermination, arguing that the grant of LPR status and his efforts at rehabilitation presented changed circumstances justifying the IJ's reconsideration of his bond denial. On September 30, 2025, the IJ held that she lacked jurisdiction to consider him for bond because he was subject to mandatory detention under § 1225(b)(2). *See* Ex. D, September 30, 2025 Bond Order.

36. Mr. Lopez remains detained at Farmville Detention Center in Farmville, Virginia.

LEGAL BACKGROUND

DHS Detention Authority Under § 1225(b)(2) and § 1226(a)

37. In 1996, Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), Pub. L. 104-208, which set forth separate procedures for the removal and detention of arriving or recently arrived noncitizens and noncitizens who have entered and established a presence in the United States, even those who did so in violation of the immigration laws. *Compare* 8 U.S.C. § 1225, *with* 8 U.S.C. §§ 1226, 1229a. For individuals with an established presence in the United States, the INA mandates that "an immigration judge shall conduct proceedings for deciding the inadmissibility or deportability of a [noncitizen]." 8 U.S.C. § 1229a(a)(1). Removal proceedings under 8 U.S.C. § 1229a(a)(1) "shall be the sole and exclusive procedure from the United States" unless otherwise specified in the INA. 8 U.S.C. § 1229a(a)(3).

38. During the pendency of standard removal proceedings under 8 U.S.C. § 1229a, § 1226 provides for the detention of noncitizens already in the United States, even those who entered illegally or without inspection. For noncitizens subject to detention under § 1226, § 1226(a) sets forth the default rule, giving the government the discretion to arrest and detain noncitizens "pending a decision on whether the alien is to be removed from the United States," while § 1226(c) mandates the detention of certain classes of criminal noncitizens. 8 U.S.C. § 1226(a), (c). After an initial arrest, a noncitizen subject to detention under § 1226(a) may continue to be detained, released on conditional parole, or released on a bond of at least $1,500. *Id.*

39. When a noncitizen is detained under § 1226(a), DHS makes an initial custody determination. 8 C.F.R. §§ 1003.19(a), 1236.1(d). The noncitizen may have DHS's initial custody determination reviewed by an IJ, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), and ultimately by the Board, *see* 8

C.F.R. § 1236.1(d)(3).

40. Further, even if the IJ denies the initial request for bond, the noncitizen is entitled to seek a "subsequent bond redetermination . . . upon a showing that the [noncitizen's] circumstances have changed materially since the prior bond redetermination." 8 C.F.R. § 1003.19(e).

41. In contrast to the discretionary detention scheme established for noncitizens already in the United States, IIRIRA created a separate, expedited removal process for certain "applicants for admission" deemed to be "arriving aliens." 8 U.S.C. § 1225(b). The INA defines an applicant for admission as a noncitizen "present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival and including a[noncitizen] who is brought to the United States after having been interdicted in international or United States waters)." 8 U.S.C. § 1225(a)(1).

42. The INA further clarifies that the term "application for admission" has "reference to the application for admission *into* the United States," making clear that the term applies to those applying to enter into the United States. 8 U.S.C. § 1101(a)(4) (emphasis added). Notably, individuals subject to expedited removal are not eligible for bond pending completion of their removal hearings. *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018); *see id.* at 303 (distinguishing individuals subject to § 1225(b) from those "already present in the United States").

43. Critically, expedited removal proceedings do not apply to all "applicants for admission." Instead, they may be applied only to: (1) individuals who are arriving in the United States at a port of entry without valid documents; and (2) those without valid documents who have been in the United States for less than two years and have not been admitted or paroled. 8 U.S.C. § 1225(b)(1)(A)(iii)(II); *see Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103,

109 (2020). Further, this second subset of individuals—noncitizens who have been in the United States for less than two years and have not been admitted or paroled—only become subject to expedited removal if so designated by DHS. *See* 8 U.S.C. § 1225(b)(1)(A)(iii)(I) (granting discretionary authority to apply expedited removal to any or all noncitizens described in 8 U.S.C. § 1225(b)(1)(A)(iii)(II)); *see also* Notice, Designating Aliens for Expedited Removal, 90 Fed. Reg. 8139, 8139 (Jan. 24, 2025) (designating the entire subset of noncitizens described in 8 U.S.C. § 1225(b)(1)(A)(iii)(II) subject to expedited removal: i.e., noncitizens "determined to be inadmissible under [8 U.S.C. §§ 1182(a)(6)(C) or (a)(7)] who have not been admitted or paroled into the United States and who have not affirmatively shown . . . that they have been physically present in the United States continuously for the two-year period immediately preceding the date of the determination of inadmissibility").

44. Noncitizens placed in expedited removal proceedings are referred to standard removal proceedings under § 1229a if they establish that they have a credible fear of persecution if removed. *See* 8 U.S.C. § 1225(b). Otherwise, the noncitizen is ordered removed "without further hearing or review." 8 U.S.C. § 1225(b)(1)(B)(iii). Further, any noncitizen "subject to the procedures under [8 U.S.C. § 1225(b)] shall be detained pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed." 8 U.S.C. § 1225(b)(1)(B)(iv).

45. Finally, § 1225(b)(2) mandates the detention of certain "applicants for admission" not covered by § 1225(b)(1). Yet in keeping with the statute's focus on arriving aliens, the statute does not mandate detention for all applicants for admission but only those "seeking admission" to the United States. 8 U.S.C. § 1225(b)(2).

46. Since IIRIRA was first enacted, courts and the U.S. Government have consistently taken the

position that noncitizens who have entered without inspection and are encountered in the United States years after their initial entry are entitled to removal proceedings under § 1229a and subject to detention under § 1226. *See, e.g., Jennings*, 583 U.S. at 303 ("While the language of §§ 1225(b)(1) and (b)(2) is quite clear, §1226(c) is even clearer. As noted, § 1226 applies to aliens *already present in the United States*.") (emphasis added); IIRIRA Implementing Regulation, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) ("Despite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination."); *see also Benitez v. Francis*, 2025 WL 2371588 (S.D.N.Y. Aug. 8, 2025) (holding that a noncitizen who has been residing in the United States for more than two years cannot be classified as an "alien seeking admission"); *Martinez v. Hyde*, No. 25-cv-11613, 2025 WL 2084238, at *8 (D. Mass. July 24, 2025) (rejecting the Government's "novel interpretation" that 1225(b) applies to noncitizens detained while present in the United States).

47. Despite amending the INA numerous times since passing IIRIRA, *see, e.g.*, REAL ID Act of 2005, Pub. L. No. 109-13, 119 Stat. 302, Congress has never seen fit to clarify or alter this universally accepted interpretation of the statute.

48. Yet on July 8, 2025, the Government abruptly rejected the reading of 8 U.S.C. § 1226(a) it adopted when IIRIRA was first enacted and embraced for the next thirty years. In a complete reversal, "DHS, in coordination with the Department of Justice (DOJ) . . . revisited its legal position on detention and release authorities," and issued guidance instructing all ICE employees that 8 U.S.C. § 1225 rather than § 1226 "is the applicable immigration detention authority for all applicants for admission." *See* Immigr. & Customs Enf't, Interim Guidance Regarding Detention Authority for Applicants for Admission (July 8, 2025), *available at*

https://immpolicytracking.org/policies/ice-issues-memo-eliminating-bond-hearings-for-undocumented-immigrants/#/tab-policy-documents.

49. On September 5, 2025, the Board adopted DHS's novel statutory reading of 8 U.S.C. § 1225(b)(2)(A) in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216. The Board found no distinction between the statutory terms "applicant for admission" and "seeking admission," and concluded that § 1225(b)(2) must be read to include all noncitizens who have not been inspected and admitted at any point. *Id.* at 221-22. Further, the Board asserted that legislative history supported its construction, although it did not cite any legislative history addressing the detention statutes. *Id.* at 223-25.

50. Yet as courts have almost universally concluded, DHS and EOIR's interpretation runs counter to the statute's plain language, basic canons of statutory interpretation, and Supreme Court precedent. *Maldonado Merlos v. Noem*, No. 1:25-cv-1645 (E.D. Va. Oct. 9, 2025); *Singh v. Noem*, No. 1:25-cv-1525 (E.D. Va. Oct. 7, 2025); *Ortiz Ventura v. Noem*, No. 1:25-cv-01429-MSN-WBP (E.D. Va. Oct. 2, 2025); *Quispe-Ardiles v. Noem*, No. 1:25-cv-01382-MSN-WEF (E.D. Va. Sept. 30, 2025); *Hasan v. Crawford*, 1:25-cv-01408-LMB-IDD, 2025 WL 2682255 (E.D. Va. Sept. 19, 2025). *See also Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025);; *Alvarez-Martinez v. Noem*, No. 5:25-CV-01007-JKP, 2025 WL 2598379 at *4 (W.D. Tex., Sept. 8, 2025); *Benitez v. Francis*, -- F. Supp. 3d --, 2025 WL 2371588 (S.D.N.Y. Aug. 8, 2025) (holding that a noncitizens who has been residing in the United States for more than two years cannot be classified as an "alien seeking admission"); *Martinez v. Hyde*, No. 25-cv-11613, 2025 WL 2084238 (D. Mass. July 24, 2025).

51. The new Board precedent violates the INA by subjecting Mr. Lopez, a man who has resided

in the United States since 2008, to the same mandatory detention regime reserved for applicants at the border seeking initial entry into the United States.

Rescission of LPR Status

52. When DHS grants a noncitizen LPR status, it may only rescind the grant in compliance with the procedures set forth in the INA and its implementing regulations.

53. If, within five years of a noncitizen's adjustment of status, "it shall appear to the satisfaction of the Attorney General that the person was not in fact eligible for such adjustment of status, the Attorney General shall rescind the action taken granting an adjustment of status to such person and cancelling removal in the case of such person if that occurred." 8 U.S.C. § 1256(a).

54. The implementing regulations require DHS to follow specific procedures, beginning with "personal service upon such person of a notice of intent to rescind," which shall inform the noncitizen of the allegations upon which the rescission is based. 8 C.F.R. § 1246.1.

55. The notice shall permit the noncitizen 30 days to respond to the allegations "in writing under oath," and shall permit the noncitizen to request a rescission hearing before an immigration judge. *Id.*

56. The regulations provide specific, detailed procedures for the rescission hearing, as well as any appeal. 8 C.F.R. § 1246.4-1246.7. Only if the noncitizen's residence is rescinded "in accordance with section 246 of the [INA] and this part" must the noncitizen surrender his or her lawful permanent resident card, upon demand. 8 C.F.R. § 1246.9.

CLAIMS FOR RELIEF

COUNT ONE

Violation of Immigration and Nationality Act
(8 U.S.C. § 1226(a))

57. Mr. Lopez realleges and incorporates by reference the paragraphs above.

58. Mr. Lopez is not subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). He is properly subject to detention under § 1226(a) and entitled to a bond hearing by statute and regulation as countless district court decisions have affirmed. *See supra* ¶ 38.

59. As a threshold matter, Mr. Lopez is not an "applicant for admission" as defined at § 1225(a)(1) as DHS has granted his application for lawful permanent residence and has not taken the proper steps to revoke that grant of that status. As the grant of LPR status is an admission, he is not an "applicant for admission" subject to detention under § 1225(b)(2).

60. Even if he were an applicant for admission, the plain language of the INA is clear: § 1225(b)(2) "authorizes the Government to detain aliens *seeking admission into the country*," while § 1226(a) "authorizes the Government to detain certain aliens *already in the country* pending the outcome of removal proceedings." *Jennings*, 583 U.S. at 289 (emphasis added); *accord Sampiao v. Hyde*, No. 1:25-cv-11981, 2025 WL 2607924, at *8 (D. Mass. Sept. 9, 2025); *Gomes v. Hyde*, No. 1:25-cv-11571, 2025 WL 1869299, at *5 (D. Mass. July 7, 2025).

61. As the Supreme Court recognized in *Jennings*, § 1225(b) focuses on individuals arriving at the border and ports of entry and thus are in the process of "seeking admission." *Jennings*, 583 U.S. at 297, 303; *see also* 8 C.F.R. § 1.2 (addressing noncitizens who are geographically "coming or attempting to come into the United States."). Conversely, § 1226(a) focuses on individuals who are already in the United States and who the Government is seeking to remove through removal proceedings. *Id.* at 303.

62. The INA further clarifies that the term "application for admission" has "reference to the application for admission into the United States," making clear that the term applies to those applying to enter into the United States physically. 8 U.S.C. § 1101(a)(4). Mr. Lopez cannot reasonably be described as "seeking admission" to a country he has lived in for the past

seventeen years.

63. Conversely, to apply the statute to "all applicants for admission" regardless of whether they are "seeking admission" (as the Board did in *Matter of Hurtado*) would render the phrase "seeking admission" redundant. *See Martinez*, 2025 WL 2084238, at *2. And to "treat[] the terms 'applicant for admission' and 'alien seeking admission' as synonymous [would] violate[] the principle that Congress is presumed to have acted intentionally in choosing different words in a statute, such that different words and phrases should be accorded different meanings." *Benitez*, 2025 WL 2371588, at *6.

64. Additionally, applying § 1225(b)(2) to all noncitizens except those who have been admitted could not have been Congress's intent because it would render recent amendments to the INA in the Laken Riley Act redundant. *Sampiao*, 2025 WL 2607924, at *8; *Rodriguez*, 779 F. Supp. 3d at 1259; *Gomes*, 2025 WL 1869299, at *7. Specifically, the recent amendment to § 1226(c)(1) require mandatory detention for individuals who are present in the United States without being admitted or paroled *and* who have committed certain criminal offenses. *Sampiao*, 2025 WL 2607924, at *8. Yet if all noncitizens who are inadmissible are subject to mandatory detention under § 1225(b)(2), as Respondents contend, there would be no need for Congress to identify subcategories of inadmissible noncitizens who are subject to mandatory detention under § 1226(c), rendering the provision completely redundant. *Sampiao*, 2025 WL 2607924, at *8 (citing the *Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 386 (2013) ("The canon against surplusage is strongest when an interpretation would render superfluous another part of the same statutory scheme.").

65. Finally, even if the text of the statute were unclear, the statutory titles and headings reinforce the distinction between noncitizens who entered without inspection and are subject to

discretionary detention under § 1226(a) and arriving aliens inspected upon initial entry to the United States who are subject to mandatory detention under § 1225(b). *Compare* Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. No. 104-208, § 302, 110 Stat. 3009 (entitled "*Inspection* of Aliens; Expedited Removal of Inadmissible *Arriving Aliens*; Referral for Hearing) (codified at 8 U.S.C. § 1225) (emphasis added), *with* IIRIRA, § 303 (codified at 8 U.S.C. § 1226) (entitled "Apprehension and Detention of Aliens"). *See also Zumba v. Bondi*, No. 25-cv-14626-KSH, 2025 WL 2753496, at *6 (D.N.J. Sept. 26, 2025) (concluding that "§ 1225 repeatedly cabin[s] its application to 'Inspections,' which, as petitioner convincingly argues, occurs at ports of entry, their functional equivalent, or near the border.").

66. Thus, this Court must find that subjecting Mr. Lopez to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) and denying him the bond hearing he is entitled to under § 1226(a).

COUNT TWO

Violation of 8 C.F.R. § 1003.19(e)

67. Mr. Lopez realleges and incorporates by reference the paragraphs above.

68. As Mr. Lopez may only be detained under § 1226(a), he is entitled to seek reconsideration of his prior bond denial based on changed circumstances under 8 C.F.R. § 1003.19(e).

69. He was denied that opportunity on September 30, 2025, when the IJ incorrectly concluded that he was subject to mandatory detention under § 1225(b)(2) and denied his motion for custody redetermination.

PRAYER FOR RELIEF

Based on the foregoing, Mr. Lopez requests that this Court:

(1) Assume jurisdiction over this matter;

(2) Issue an order requiring Respondents to show cause why this Petition should not be

granted within three days;

(3) Declare that 8 U.S.C. § 1226(a) governs Mr. Lopez's detention by U.S. immigration authorities;

(4) Order that Mr. Lopez be afforded a bond hearing as authorized under 8 U.S.C. § 1226(a) and 8 C.F.R. § 1003.19(e) at which 8 U.S.C. § 1225(b)(2)(A) cannot be applied; and where DHS is barred from invoking the automatic stay provision at 8 C.F.R. § 1003.19(i)(2) should bond be granted.

(5) Grant any other and further relief this Court deems just and proper.

Dated: January 15, 2026

Respectfully submitted,

/s/ Eileen P. Blessinger
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Counsel for Petitioner

CERTIFICATE OF REPRESENTATION

Undersigned counsel submit that they represent Petitioner in this action and submit this pleading on his behalf. 28 U.S.C. § 2242.

Dated: January 15, 2026

Respectfully submitted,

/s/ Eileen P. Blessinger
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