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8 UNITED STATES DISTRICT COURT
9 MIDDLE DISTRICT OF GEORGIA
10 COLUMBUS DIVISION

11 MIGUEL ANGEL DELGADO MARTINEZ,

12 Petitioner,

13 v.

14 Warden, Stewart Detention Center

15 Respondents.

Case No. 4:26-cv-0118-CDL-CHW

**REPLY TO RESPONDENTS'
RESPONSE AND IN SUPPORT OF
PETITION FOR WRIT OF
HABEAS CORPUS**

INTRODUCTION

The facts of the matter are not in dispute. Petitioner is being held by ICE without bond due to ICE and the Board of Immigration Appeals' ("BIA") interpretation of "applicants for admission" that was rejected by this Court. *See J.A.M. v. Streeval*, No. 4:25-CV 342-CDL, 2025 WL 3050094 (M.D. Ga. Nov. 1, 2025); *P.R.S. v. Streeval*, No. 4:25-CV-330-CDL, 2025 WL 3269947 (M.D. Ga. Nov. 24, 2025). The Court should continue to reject this line of reasoning and order the Petitioner released or that he is entitled to a bond hearing under 8 U.S.C. § 1226(a).

ARGUMENT

I. PETITIONER IS DETAINED UNDER § 1226(a) NOT UNDER § 1225(b)(2)

The deprivation of petitioner's liberty springs from new and novel interpretations of the Immigration and Nationality Act ("INA") that have come to the fore over the past few months. Despite the language of the statute, Congressional intent in enacting Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA"), agency regulations, and longstanding agency practice, on July 8, 2025, DHS issued a memo to all employees of Immigration and Customs Enforcement ("ICE") stating that "[t]his message serves as notice that DHS, in coordination with the Department of Justice (DOJ), has revisited its legal position on detention and release authorities. *See* <https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission> (last accessed August 4, 2025). DHS has determined that section 1225 of the Immigration and Nationality Act (INA), rather than section 1226, is the applicable immigration detention authority for all applicants for admission.

As a result, DHS began to consider *all* noncitizens who have entered the United States without inspection and are subject to the grounds of inadmissibility, including long-time U.S. residents, subject to mandatory detention under § 1225(b) and ineligible for release on bond. Thus,

1 according to DHS “[t]he only aliens eligible for a custody determination and release on
2 recognizance, bond, or other conditions under [§ 1226(a)] during removal proceedings are aliens
3 admitted to the United States and chargeable with deportability under [8 U.S.C. § 1227], with the
4 exception of those subject to mandatory detention under [§ 1226(c)].” *Id.*

5 Because DHS’s position lacked a precedential basis at that time, some bond proceedings
6 continued for those, like petitioner, who entered the United States without inspection. However, on
7 September 5, 2025, the BIA decided that their new “plain language” reading of the statute
8 confirmed DHS’s position in its July 8th memo that all of those who entered the United States
9 without inspection were applicants for admission, and, so, their detention was mandatory under §
10 1225(b)(2). *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

11 This Court can and should reject the BIA’s interpretation of the INA in *Matter of Yajure*
12 *Hurtado* as the BIA’s interpretation is inconsistent with the text of § 1226 and § 1225,
13 Congress’s intent in enacting the IIRIRA in 1996, agency regulations, and long-standing agency
14 practice.

15 The Statute

16 The INA prescribes three basic forms of detention for noncitizens in removal proceedings. First,
17 8 U.S.C. §1226 authorizes the detention of noncitizens in standard non-expedited removal
18 proceedings before an IJ. *See* 8 U.S.C. §1226(a). Individuals in § 1226(a) detention are entitled to
19 a bond hearing at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a), 11226.1(d), while
20 noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to
21 mandatory detention, *see* 8 U.S.C. §1226(c). Second, the INA provides for mandatory detention
22 of noncitizens subject to expedited removal under 8 U.S.C. §1225(b)(1) and for other *recent*
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1 arrivals seeking admission referred to under 8 U.S.C. § 1225(b)(2). Finally, the Act also provides
2 for detention of noncitizens who have been previously ordered removed, including individuals in
3 withholding-only proceedings, *see* 8 U.S.C. § 1231(a)–(b).

4 The plain text of § 1226 demonstrates that it, not § 1225(b), applies to Petitioner’s
5 detention. Section 1226(a), “provides the general process for arresting and detaining [noncitizens]
6 who are present in the United States and eligible for removal.” *Diaz v. Garland*, 53 F.4th 1189,
7 1196 (9th Cir. 2022) (citation omitted). As the Supreme Court has remarked, § 1226(a), “sets out
8 the default rule: The Attorney General may issue a warrant for the arrest and detention of a[]
9 [noncitizen] ‘pending a decision on whether the [noncitizen] is to be removed from the United
10 States.’” *Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018) (quoting 8 U.S.C. § 1226(a)). Section
11 1226(c) carves out a statutory category of noncitizens for whom detention is mandatory, consisting
12 of individuals who have committed certain “enumerated . . . criminal offenses [or] terrorist
13 activities.” 8 U.S.C. § 1226(c). Among the individuals carved out and subject to mandatory
14 detention are certain categories of “inadmissible” noncitizens. *See* 8 U.S.C. § 1226(c)(1)(A), (D),
15 (E). This is in stark contrast with mandatory detention provision under 8 U.S.C. § 1225(b)(2),
16 which “supplement[s] § [1226’s] detention scheme.” *Diaz*, 53 F.4th at 1197. Section 1225(b)
17 “applies primarily to [noncitizens] seeking entry into the United States (‘applicants for admission’
18 in the language of the statute).” *Jennings*, 583 U.S. at 297; *see* 8 U.S.C. § 1225(b) (entitled
19 “Inspection of applicants for admission”).

20 Thus, the plain text of § 1226(a) applies to noncitizens like petitioner. The fact that § 1226(a)
21 is the default rule for arrest and detention and that section (c) carves out exceptions for
22 inadmissible noncitizens further demonstrates that the discretionary bond procedures apply to
23 noncitizens like petitioner who are present without being admitted or paroled and have not
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1 been implicated in any crimes set forth in subsection (c). The Supreme Court has held that when
2 Congress creates “specific exceptions” to a statute’s applicability, it “proves” that absent those
3 exceptions, the statute generally applies. *See Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins.*
4 *Co.*, 559 U.S. 393, 400 (2010).

5 The recent enactment of Laken Riley Act (“LRA”) further supports this finding. The Act
6 added language to § 1226(c) that directly references people who have entered without inspection
7 or who are present without authorization. *See* Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3
8 (2025). Pursuant to these amendments, noncitizens charged as inadmissible under 8 U.S.C. §
9 1182(a)(6)(A) (the inadmissibility ground for entry without inspection) or 8 U.S.C. §
10 1182(a)(7)(A) (the inadmissibility ground for lacking valid documentation to enter the United
11 States) *and* who have been arrested, charged with, or convicted of new certain crimes (not
12 previously covered by INA § 1226(c)) are now subject to § 1226(c)’s mandatory detention
13 provisions. *See* 8 U.S.C. § 1226(c)(1)(E). By including such individuals under § 1226(c), Congress
14 reaffirmed that § 1226(a) covers noncitizens who are not subject to section (c) but are charged as
15 removable under § 1182(a)(6)(A) or 1182(a)(7). *Gieg v. Howarth*, 244 F.3d 775, 776 (9th Cir.
16 2001) (“[w]hen Congress acts to amend a statute, [courts] presume it intends its amendment
17 to have real and substantial effect.”).

18 If § 1226(a) did not apply to petitioner—like the BIA contends—vast portions of the § 1226
19 would be rendered meaningless. This is because the BIA contends that noncitizens like petitioner
20 who entered without inspection are really “applicants for admission” and therefore subject to
21 mandatory detention under § 1225(b)(2). *Matter of Yajure Hurtado*, 29 I&N Dec. 216, 220 (BIA
22 2025). Courts have made it clear that statutes must be interpreted as a whole, “giving effect to
23 each word and making every effort not to interpret a provision in a manner that renders other
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1 provisions of the same statute inconsistent, meaningless or superfluous.” *Shulman v. Kaplan*, 58
2 F.4th 404, 410–11 (9th Cir. 2023) (quoting *Rodriguez v. Sony Computer Ent. Am., LLC*, 801 F.3d
3 1045, 1051 (9th Cir. 2015)).

4 Furthermore, § 1225(b)(A) concerns a completely different category of noncitizens. In
5 *Jennings*, the Supreme Court discussed § 1225 as part of a process that “generally begins at the
6 Nation’s borders and ports of entry, where the Government must determine whether a [noncitizen]
7 seeking to enter the country is admissible.” 583 U.S. at 287. As for § 1226, *Jennings* described it
8 as governing “the process of arresting and detaining” noncitizens who are living “inside the United
9 States” but “may still be removed,” including noncitizens “who were inadmissible at the time of
10 entry.” *Id.* at 288. The Court then summarized the distinction as follows: “In sum, U.S.
11 immigration law authorizes the Government to detain certain [noncitizens] seeking admission into
12 the country under §§ [1225](b)(1) and (b)(2). It also authorizes the Government to detain certain
13 [noncitizens] *already in the country pending the outcome of removal proceedings* under §§
14 [1226](a) and (c).” *Id.* at 289 (emphasis added); *see also Dep’t of Homeland Sec. v. Thuraissigiam*,
15 591 U.S. 103, 140 (2020) (a noncitizen “who *tries to enter* the country illegally is treated as an
16 applicant for admission . . . and a [noncitizen] who is detained *shortly after unlawful entry* cannot
17 be said to have effected an entry”) (emphasis added) (cleaned up).

18 The BIA’s newfound position misconstrues the phrase “applicant for admission” to suggest that
19 every person, other than those who have been admitted, are subject to mandatory detention.
20 Section 1225(a)(1) defines an “applicant for admission” as a person who is “present in the United
21 States who has not been admitted or who arrives in the United States.” 8 U.S.C. § 1225(a)(1).
22 According to the BIA, § 1225(b)(1) generally applies to arriving aliens and § 1225(b)(2) serves as
23 a broader catchall provision for all applicants for admission not covered by § 1225(b)(1). *See*
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1 *Matter of Yajure Hurtado* at 218. In other words, that every noncitizen who entered without parole
2 or inspection is an “applicant for admission” per § 1225(a)(1) and is therefore subject to mandatory
3 detention. However, § 1225(b)(2)(A) states in full that:

4 Subject to subparagraphs (B) and (C), in the case of an alien who is an applicant
5 for admission, if the examining immigration officer determines that an *alien seeking*
6 *admission is not clearly and beyond a doubt entitled to be admitted, the alien shall*
7 *be detained for a proceeding under section 1229a of this title. Id.* (emphasis added).

8 Thus, for § 1225(b)(2)(A) to apply, several conditions must be met—in particular, an
9 “examining immigration officer” must determine that the individual is: (1) an “applicant for
10 admission”; (2) “seeking admission”; and (3) “not clearly and beyond a doubt entitled to be
11 admitted.” The BIA’s position conveniently overlooks these conditions and treats “applicants for
12 admission” the same as those “seeking admission.” The phrase “seeking admission” is undefined
13 in the statute but necessarily implies some sort of present-tense action. *See Matter of M-D-C-V-*,
14 28 I. & N. Dec. 18, 23 (BIA 2020) (“The ‘use of the present progressive, like use of the present
15 participle, denotes an ongoing process.’” (quoting *Al Otro Lado v. Wolf*, 952 F.3d 999, 1011-12
16 (9th Cir. 2020))). Indeed, only those who take affirmative acts, like submitting an “application for
17 admission,” or presenting themselves at a port of entry asking to enter the country, are those that
18 can be said to be “seeking admission” within § 1225(b)(2)(A).

19 By limiting (b)(2) to those “seeking admission,” Congress confirmed that it did not intend to
20 sweep into this section individuals like petitioner who have already entered and are now residing
21 in the United States. *See Torres v. Barr*, 976 F.3d 918, 927 (9th Cir. 2020) (en banc) (holding
22 that an individual submits an “application for admission” only at “the moment in time when the
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immigrant actually applies for admission into the United States.”¹ Accordingly, § 1225(b)(2)’s reference to “applicants for admission” must be read in their context and a view to their place in the overall statutory scheme.” *San Carlos Apache Tribe v. Becerra*, 53 F.4th 11226, 1240 (9th Cir. 2022) (citation omitted); *see also King v. Burwell*, 576 U.S. 473, 492 (2015) (looking to an act’s “broader structure . . . to determine [the statute’s] meaning”).

The Board’s recent decision in *Matter of Q. Li*, 29 I. & N. Dec. 66 (BIA 2025) reinforces this position. The Board held that a noncitizen who was apprehended “approximately 5.4 miles away from a designated port of entry and 100 yards north of the border” was detained under § 1225(b) and not § 1226(a). *Id.* at 67. In other words, the noncitizen was apprehended upon arrival. The Board then explained that such persons are properly treated as “arriv[ing] in the United States,” given that they are “detained shortly after unlawful entry,” and “[are] apprehended’ just inside’ the southern border, and not at a point of entry, on the same day [they] crossed into the United States.” *Id.* at 68 (quoting *Matter of M-D-C-V-*, 28 I. & N. Dec. 18, 23 (BIA 2020)). Notably, the Board’s decision supports the argument that § 1226(a) “applies to [noncitizens] already present in the United States,” while § 1225(b) “applies primarily to [noncitizens] seeking entry into the United States and authorizes DHS to detain a[] [noncitizen] without a warrant at the border.” *Id.* at 70 (internal quotation marks omitted).

The broader statutory structure of immigration detention authority also demonstrates the inapplicability of § 1225(b) to petitioner’s case. *See King*, 576 U.S. at 492 (explaining that an act’s “broader structure” can be a useful tool “to determine [a statute’s] meaning.”); *see also Biden v.*

¹ 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).

1 *Texas*, 597 U.S. 785, 799–800 (2022) (looking to statutory structure to inform interpretation of
2 INA provision). This is particularly true where “a provision . . . may seem ambiguous in isolation.”
3 *United Sav. Ass’n of Tex. v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365, 371 (1988).
4 In such situations, the statute’s meaning “is often clarified by the remainder of the statutory
5 scheme . . . because only one of the permissible meanings produces a substantive effect that is
6 compatible with the rest of the law.” *Id.*

7 The broader text of § 1225 reinforces this understanding of the two sections’ structure and
8 application. § 1225 concerns “expedited removal of inadmissible *arriving* [noncitizens].” 8 U.S.C.
9 § 1225 (emphasis added). Paragraph (b)(1) encompasses only the “inspection” of certain “arriving”
10 noncitizens and other recent entrants the Attorney General designates, and only those who are
11 “inadmissible” for having misrepresented information to an inspecting officer or for lacking
12 documents to enter the United States. Paragraph (b)(2) is similarly limited to people applying for
13 admission when they arrive in the United States. The title explains that this paragraph addresses
14 the “[i]nspection of other [noncitizens],” i.e., those noncitizens who are “seeking admission,” but
15 whom (b)(1) does not address. *Id.* § 1225(b)(2), (b)(2)(A).

16 By limiting (b)(2) to those “seeking admission,” Congress confirmed that it did not intend to
17 sweep into this section individuals like petitioner who have already entered and are now residing
18 in the United States. Otherwise, the language “seeking admission” in § 1225(b)(2) would serve no
19 purpose, as the statute specifies that it is addressing a person who is both an “applicant for
20 admission” and who is determined to be “seeking admission.” *Id.*

21 Furthermore, subparagraph (b)(2)(C) addresses the “[t]reatment of [noncitizens] arriving
22 from contiguous territory,” i.e., “the case of [a noncitizen] . . . who is arriving on land.” 8 U.S.C.
23 § 1225(b)(2)(C). This language further underscores Congress’s temporal requirements in § 1225
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1 and focus on those who are arriving into the United States. Similarly, the title of § 1225 refers to
 2 the “inspection” of “inadmissible arriving” noncitizens. *See, e.g., Dublin v. United States*, 599 U.S.
 3 110, 120–21 (2023) (relying on section title to help construe statute).

4 Finally, the entire statute is premised on the idea that an inspection occurs near the border and
 5 shortly after arrival, as the statute repeatedly refers to “examining immigration officer[s],” 8 U.S.C.
 6 § 1225(b)(2)(A), (b)(4), and sets out procedures for “inspection[s]” of people “arriving in the
 7 United States,” *Id.* § 1225(a)(3), (b)(1), (b)(2), (d). Thus, the text of the § 1226 and § 1225 when
 8 construed in isolation and together within the broader statutory scheme demonstrate
 9 definitively that petitioner can only be detained under § 1226(a).

10 CONCLUSION

11 Petitioner’s detention under § 1225(b)(2)(A) violates his rights under the Immigration and
 12 Nationality Act and his due process rights. The Court should remedy this violation by either
 13 ordering his immediate release or an order holding that Petitioner is detained under § 1226(a) and
 14 require that the Immigration Court hold a bond hearing.

15 DATED this 28 of January 2026

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