

Marti L. Jones, (Utah 5733)
Adam L. Crayk, (Utah 9443)
STOWELL CRAYK, PLLC
4252 South 700 East
Millcreek, Utah 84107
Email: marti@lawschb.com
Telephone: (385) 549-1260
Facsimile: (801) 483-0705

Attorneys for Petitioner, Pro Hac Vice

Kaleb D. Anderson, 7582
GARIN LAW GROUP
9900 Covington Cross Drive, Suite 210
Las Vegas, NV 89144-7052
Telephone: (702) 382-1500
Email: kanderson@garinlawgroup.com

Attorney for Petitioners

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

MOHAMMAD RAFI OMARI)

Petitioner,)

v.)

JOHN MATTOS, Warden, Nevada Southern Detention)
Center; RUBEN LEYVA Acting Field Office Director)
Salt Lake City Enforcement and Removal Operations,)
United States Immigration and Customs Enforcement)
(ICE/ERO); BRIAN HENKE Acting Field Office)
Director Las Vegas/Salt Lake City ICE/ERO)
KRISTI NOEM, Secretary, United States Department of)
Homeland Security (DHS), Pamela BONDI Attorney)
General of the United States)

Respondents.)

PETITIONER'S TRAVERSE
RESPONSE AND NOTICE
OF RELEASE

Case No. 2:26-cv-00252-RFB-BNW

JUDGE: Richard F. Boulware, II

Agency Case No. 

I. NOTICE TO THE COURT

Counsel for Petitioner hereby notify the Court that on March 4, 2026, Petitioner was provided with a bond hearing by the Las Vegas, Nevada Immigration Court. The Immigration Judge granted him a bond, and it has been posted. As of this writing it is uncertain whether Petitioner remains in custody or has been released.

II. MOOTNESS AND JUSTICIABILITY

Counsel for Petitioner nevertheless asserts that this Court retains jurisdiction over this matter, that Petitioner's release does not entirely moot this case. That is the case because there continues to be a dispute over which detention statute is applicable to Petitioner--§1225(b)(2)(A) mandatory detention without bond, as Respondents argue, or §1226(a), as Petitioner asserts, based on the release documents he was provided when he was initially released after processing at the border in November 2023. Inasmuch as Respondents continue to claim that Petitioner is subject to mandatory detention without bond, solely because he is unquestionably a member of the Congressionally defined class deemed to be "applicants for admission" in 8 U.S.C. §1225(a)(1), Petitioner is subject to equally arbitrary re-detention at any point, depending solely on where he may travel or reside. While the Las Vegas, Nevada, Immigration Court granted Petitioner a bond, Respondents and their agents continue to assert that Petitioner is subject to mandatory detention. One Immigration Court's decision—in the Ninth Circuit—to recognize the legal consequences of the District Court's "Order Granting Plaintiff Petitioners' Motion to Enforce Judgement," *Maldonado Bautista et. Al. v. Santacruz Jr.* 5:25-cv-01873-SSS-BFM (February 18, 2026) vacating *Matter of Yajure Hurtado* 29 I&N Dec. 216 (BIA 2025) does not effectively protect this Petitioner, in anything other than the immediate moment. Petitioner resides outside the Ninth Circuit. Next time they wish to detain Petitioner, Respondents may

choose to send him to a detention center in some other circuit, such as the Fifth, where the *Maldonado Bautista* order is routinely ignored. The termination of physical custody does not moot a habeas petition where continuing legal consequences remain. *Carafas v. LaVallee*, 391 U.S. 234, 237–38 (1968); *Spencer v. Kemna*, 523 U.S. 1, 7–8 (1998). The Ninth Circuit held in *Alvarez v. Hill* 667 F.3d 1061, 1063 (9th Cir. 2021) that “A case becomes moot only when it is impossible for a court to grant any effectual relief whatever to the prevailing party.” The Ninth Circuit has also noted that “locating [an individual] within the statutory framework of detention authority” can be a critical aspect of a habeas petition challenging detention under the Immigration and Nationality Act (INA). *See Casas-Castrillon v. Department of Homeland Security*, 535 F.3d 942, 945 (9th Cir. 2008). Finally, the Ninth Circuit also wrote in *Diouf v. Napolitano* “the voluntary cessation exception to mootness applies because—absent action by this court—the government could redetain Diouf and deny him a bond hearing, at any time.” 634 F.3d 1081, 1084 fnt 3 (9th Cir. 2011).

For that exact same reason, despite Petitioner’s imminent release on bond, he respectfully requests that this court nevertheless grant his Petition to order that as a matter of law, Respondents may not subject him to mandatory detention without bond pursuant to their 2025 policies and agency decisions reinterpreting the language of 8 U.S.C. §1225(b)(2)(A).

III. SUMMARY OF OPPOSITION ARGUMENTS

In summary, the Respondents’ position remains that because Petitioner is deemed by law to be “an applicant for admission” 8 USC § 1225(a) he is therefore subject to mandatory detention without bond. According to Respondents’ reading of the relevant statutes, all those deemed applicants for admission in §1225(a)(1) are, solely *by virtue of that classification*, “seeking admission,” and are therefore subject to mandatory detention without bond as members

of the class described in 8 USC § 1225 (b)(2)(A). In Respondents' language "an alien like Petitioner, who is identified by immigration authorities as one who unlawfully crossed the international border, and who does not choose to depart from the United States voluntarily, is "seeking admission" under any interpretation of that phrase." Dkt. 12 *8. This assertion is not supported in the case law (see, for example, Judge Ho's analogy of the person who enters the movie theater without purchasing a ticket, and then sits through the first few minutes of a film, would not ordinarily then be described as 'seeking admission' to the theater." *Lopez-Benitez v. Francis et. al.* 25-cv-5937-DEH, *14-15 (SD NY Aug. 8, 2025). The Respondents' arguments misinterpret the statutory language, and ignore or discard governing precedent, including the constitutional context of the original statute, the congressional record, and the explicit choices made during notice and comment rulemaking in 1997.

Respondents' reading of 8 U.S.C. § 1225(b)(2)(A) has been the subject of intense scrutiny in the Federal Courts across the U.S., and has been repeatedly rejected by this court. See, e.g., *Escamilla-Lopez v. Holston*, 2:26-cv-00242-RFB-BNW (D. Nev. Feb 12, 2026); *Jacobo-Ramirez v. Noem*, *supra*. Among the most recent national events, Judge Sykes in the Central District of California ordered, pursuant to the authority of the Administrative Procedure Act, that the controlling agency decision, *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) be vacated. *Maldonado Bautista et. al. v. Santacruz Jr.* "Order Granting Plaintiff Petitioners' Motion to Enforce Judgement," 5:25-cv-01873-SSS-BFM (February 18, 2026). That decision followed a split panel ruling from the Fifth Circuit, agreeing with the agency's reading, in *Buenrostro-Mendez v. Bondi*, 25-20496 (5th Cir. February 6, 2026). Neither the Fifth Circuit ruling nor the Order from Judge Sykes are controlling in this case, although both should be read as evidence of the national division and for what persuasive value they offer. Judge Sykes' ruling

in *Maldonado Bautista* has directly contributed to the bond hearing that Petitioner was granted by the Las Vegas Immigration Court.¹ Despite Petitioner's bond hearing, he nevertheless files, to ensure full development of the legal and factual record, the following additional reasons why he believes that 8 U.S.C. § 1225(b)(2)(A) provides no legal authority for detaining him.

IV. ARGUMENT

In response to the Respondents' reiteration of their prior legal arguments, Petitioner notes that repeatedly, throughout their argument Respondents treat as identical, in some cases interchangeable, numerous statutory terms of art, all of which have slightly different meanings. This is understandable. Even the U.S. Supreme Court has been known to improperly equate "arriving aliens" as defined in 8 C.F.R. 1.2 with the phrase "applicants for admission" from 8 U.S.C. §1225(a). *See, e.g., Jennings v. Rodriguez*, 583 U.S. 281, 297 (2018) (As noted, §1225(b) applies primarily to aliens seeking entry into the United States ("applicants for admission" in the language of the statute.")).

But conflating the terms "applicants for admission" and "arriving aliens" and "seeking admission"—treating them as identical—misunderstands and misinterprets the statutory term "applicants for admission" and completely elides out of existence the two identifiably separate subgroups within the "applicants for admission" class. That is a critical error because when this "applicants for admission" class was created in 1996, Congress explicitly recognized that while both subgroups in the class can be treated equally for purposes of removal proceedings, when it comes to detention, the two subgroups are not identical and cannot, constitutionally, be subject to the same detention regime.

¹ At least one district court has held that the Declaratory Judgement issued by Judge Sykes in *Maldonado-Bautista* "has the 'force and effect of a final judgment.' 28 U.S.C. §2201" and therefore precludes the Government from relying on § 1225 (b)(2) to subject the Petitioner to mandatory detention. *See, Samayoa v. Smith*, 5:25-cv-190-BJB *11, *14 (W.D. Ky. Feb. 20, 2026).

1. The Statutory Text and the Record of Congressional Intent

8 U.S.C. § 1225(a) was enacted as section 302 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009 (1996) (IIRIRA). In § 1225(a), Congress defined a large class, that of “applicants for admission” in opposition to the class of aliens who have been lawfully admitted. The stated intent of the creation of this new legal classification was to collapse the prior legal distinctions between exclusion and deportation proceedings, particularly with regard to burdens of proof and due process protections. *Report of the Committee on the Judiciary on H.R. 2202*, Report No. 104-469, 225, Part I (March 1996). (“This subsection is intended to replace certain aspects of the current ‘entry doctrine,’ under which illegal aliens who have entered the United States without inspection gain equities and privileges in immigration proceedings that are not available to aliens who present themselves for inspection at a port of entry. Hence, the pivotal factor in determining an alien’s status will be whether or not the alien has been lawfully admitted.”) *Id.* In other words, Congress deliberately created and defined the new class of “applicants for admission” and specifically added statutory language to the INA designed to collapse what Congress saw as procedural advantages gained by aliens subject to deportation as opposed to exclusion, and to explicitly combine into one single “removal” proceeding all efforts to remove noncitizens unlawfully present in the U.S., regardless of how and when they arrived.

Nevertheless, the class of “applicants for admission” (or inadmissible aliens) was not intended to be monolithic. As the statutory language and Congressional history indicate, while Congress intended to collapse the prior legal distinctions between those who have made an entry, and those who have not, and to combine both exclusion and deportation into one single removal procedure, Congress in 1996 also recognized the constitutional constraints of due process.

Consistent with that awareness, IIRIRA drew very careful lines. The class of “inadmissible aliens” (subject to charges of inadmissibility under 8 U.S.C. § 1182) and also known as “applicants for admission” was defined in opposition to the class of “admitted but removable” aliens, (subject to charges of removability under 8 U.S.C. § 1227). To ensure that all noncitizens who had not been lawfully admitted or paroled would be charged with a ground of inadmissibility, IIRIRA added 8 U.S.C. § 1182(a)(6)(A)(i):

This subsection will conform the grounds of inadmissibility under section 212(a) with the new doctrine of “admission” established in section 301(a) of the bill. Currently, aliens who have entered without inspection are deportable under section 241(a)(1)(B). Under the new “admission” doctrine, such aliens will not be considered to have been admitted, and thus, must be subject to a ground of inadmissibility, rather than a ground of deportation, based on their presence without admission. (Deportation grounds will be reserved for aliens who have been admitted to the United States.)

Report of the Committee on the Judiciary on H.R. 2202, Report No. 104-469, 226, Part I (March 1996).

But because Congress understood the constitutional constraints of due process, the definition of “applicants for admission” includes two separate and clearly identifiable subclasses: A) aliens “present without admission” and B) aliens “who arrive in the United States.” 8 U.S.C. § 1225(a). Note that these two groups are parallel, (but not identical) to the two groups that under prior law fell within each of the two separate procedures—deportation and exclusion. As part of the enabling regulations, the government precisely defined the second subclass, known as “arriving aliens.” 8 C.F.R. § 1.2.

2. The Constitutional Context

Congress had solid constitutional reasons, especially in the context of detention, for distinguishing between the subclass of “arriving alien” applicants for admission at the nation’s borders, and those present without authorization, and deemed ‘applicants for admission’ as a

legal fiction for purposes of removal proceedings. Limiting the applicability of 8 U.S.C. § 1225(b) to ‘arriving aliens’ as defined in 8 C.F.R. § 1.2 or aliens actively ‘seeking admission’ at the U.S. border recognized the deep-rooted Supreme Court precedent distinguishing between the restricted procedural rights of aliens seeking admission at the border and the constitutional due process rights of aliens present within the U.S., regardless of status. A foundational premise of that precedent is the recognition that foreign nationals are persons included within the protections of the U.S. Constitution, and that the constitutional requirements of due process are at their strongest when the government is depriving a human person of her liberty:

But this Court has never held, nor must we now be understood as holding, that administrative officers, when executing the provisions of a statute involving the liberty of persons, may disregard the fundamental principles that inhere in "due process of law" as understood at the time of the adoption of the Constitution.

One of these principles is that no person shall be deprived of his liberty without opportunity at some time to be heard before such officers in respect of the matters upon which that liberty depends -- not necessarily an opportunity upon a regular, set occasion, and according to the forms of judicial procedure, but one that will secure the prompt, vigorous action contemplated by Congress, and at the same time be appropriate to the nature of the case upon which such officers are required to act. Therefore it is not competent for the Secretary of the Treasury or any executive officer, at any time within the year limited by the statute, arbitrarily to cause an alien who has entered the country, and has become subject in all respects to its jurisdiction, and a part of its population, although alleged to be illegally here, to be taken into custody and deported without giving him all opportunity to be heard upon the questions involving his right to be and remain in the United States. No such arbitrary power can exist where the principles involved in due process of law are recognized.

Yamataya v. Fisher (Japanese Immigrant Case), 189 U.S. 86, 100-101 (1903). [As cited in *Reno v. Flores*, 507 U.S. 292, 306 (1993)].

When Congress drafted and passed IRRIRA, it deliberately chose to define the class of all aliens who have not been lawfully admitted to the U.S. as “applicants for admission.” But Congress just as deliberately recognized and enshrined in the statute the two subclasses

composing “applicants for admission:” arriving aliens, (i.e., actual aliens seeking admission) and individuals present in the United States who have not been admitted, (who have never sought admission), but who Congress nevertheless deems “applicants for admission” as a legal fiction. The distinction between these two subclasses is squarely based in the long history of Supreme Court precedent recognizing that A) the requirements of constitutional due process are lowest for those seeking admission from outside the nations’ borders, *supra*, *ft. 2* and B) Aliens arrested and detained within the United States, regardless of how they entered, and especially when they have been present for extended periods, cannot be taken into custody and held arbitrarily. e.g., *Yamataya, supra*; *Reno v. Flores, supra*. See also, the extended discussion of these intertwined issues in *Make the Road New York, et. al. v. Noem* 1:25-cv-190 (D.D.C.) Memorandum Opinion August 29, 2025, pp. 23-25; and *Coalition for Humane Immigrant Rights v. Noem*, 1:25-cv-872 (D.D.C.) Memorandum Opinion August 1, 2025.

Petitioner asserts that because of that larger legal context of constitutional due process precedent--after combining the two groups “arriving aliens” and “aliens present without admission” into one single class of “applicants for admission” in 8 U.S.C. § 1225(a)--Congress nevertheless carefully distinguishes and focuses on the “arriving alien” sub-group of the “applicants for admission” class throughout 8 U.S.C. § 1225(b). The provisions of (b)(1)(A)(i) are explicitly limited to any “alien who is arriving” in the U.S. For the same constitutional reasons, it is Petitioner’s position that Congress deliberately drafted the syntactically convoluted text of 8 U.S.C. § 1225(b)(2)(A) to maintain this distinction between the two sub-classes of “applicants for admission.” There is no other explanation for the addition of the “seeking admission” qualifier. If an applicant for admission is an applicant for admission regardless of whether they are at the border or in the interior, then why is the modifying clause necessary?

What purpose does that clause serve? The BIA's reading of §1225(b)(2)(A) in *Matter of Yajure Hurtado*, supported and argued to be controlling by the Respondents, renders that 'seeking admission' clause superfluous. But conflating the two subgroups, (as the BIA and Respondents' reading does) treats aliens present without admission throughout the entire territory of the United States as though they are seeking admission at the border. This violates decades of Supreme Court precedent holding that aliens present--regardless of how they arrived--are persons within the meaning of the 5th and 14th amendments.

The Supreme Court wrote in *Plascencia, supra*: "an alien seeking initial admission to the United States requests a privilege, and has no constitutional rights regarding his application, for the power to admit or exclude aliens is a sovereign prerogative." *Plascencia* at 33. In *Yajure Hurtado*, the BIA and the Respondents conflate the "seeking admission" qualifier with the entirety of the "applicant for admission" group, failing to recognize that the 'seeking admission' qualifier functions explicitly to distinguish between the two sub-groups of the larger class. *Yajure Hurtado, supra* at 221. As the government now reads it, 8 U.S.C. § 1225(b)(2)(A) says: "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, the alien shall be detained for a proceeding under section 1229a of this title." This reading would function to convert every immigration agent throughout the United States into a border admissions officer.

Again, Petitioner contends that Congress explicitly included that "seeking admission" phrase in 8 U.S.C. § 1225(b)(2)(A) in order to reemphasize that the examination procedures laid out in 8 U.S.C. § 1225(b) are applicable *at the nation's borders*. Threaded through both the Report of the House Judiciary Committee and the Conference Committee Report explications of

the text of INA § 235/8 U.S.C. § 1225, are the qualifiers: “arriving alien” “aliens seeking admission, readmission or transit” “aliens arriving.” *House Judiciary Report* pp. 228-229; *Conference Report* pp. 208-210. Regarding the (b)(2) provisions at issue here, Congress explicitly applies them to “inspection of other *arriving aliens*”. *House Judiciary Report, supra.* at 229 (emphasis added). These reports make clear that, as used in these statutes, the phrase “arriving aliens” and/or “aliens seeking admission” in the active sense, apply only to a subgroup of the larger group of “inadmissible aliens,” otherwise known as “applicants for admission.”

3. *The Implementing Regulations*

As summarized in Petitioner’s Petition for Writ of Habeas, the regulations published in 1997 by the Respondent departments, agencies and their predecessors, “Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures” 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997), also directly contradict Respondents’ current interpretation, and instead squarely support the intended distinction between the two sub-classes of “applicants for admission.” To begin, the caption of 8 C.F.R. § 236 explicitly includes within the scope of its detention provisions both inadmissible and deportable aliens. If, as Respondents argue, all “applicants for admission” are always and only covered by the detention provisions of 8 C.F.R. § 235, then which inadmissible aliens is 8 C.F.R. § 236 referencing? As noted above, the primary Congressional purpose for creating the “applicant for admission” class was to separate the “inadmissible” noncitizens, who had never been lawfully paroled or admitted from the “deportable” aliens who had been admitted, but were now removable. “Inadmissible aliens” and “applicants for admission” are two different terms for the same group of people.

But the caption of 8 C.F.R. § 236 is not the only challenge to Respondents' recent reinterpretation of the statutory language. That is the case because Respondents' predecessor agencies initially proposed regulations which would have had precisely the same legal consequence as Respondents proposed reinterpretation of the statutory language at 8 U.S.C. § 1225(b)(2)(A). That is, the proposed regulations published in January 1997 included explicit language stating, with regard to the 8 U.S.C. 1226, "*An immigration judge may not exercise authority provided in this section and the review process described in paragraph (d) of this section shall not apply with respect to: (i) inadmissible aliens in removal proceedings.*" 62 F.R. 444, 483 (January 3, 1997) [236.1(c)(5)(i)](emphasis added). Had that regulation remained as proposed, the BIA's recent decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) would not have been novel; instead, it would have been the law for the past nearly thirty years. But in 1997 when the government published the final regulations that proposed language was explicitly and deliberately removed, with the following explanation:

The supplementary information stated the Department's intended approach, and clause (i) of the proposed regulation was in error. Accordingly, the interim rule removes paragraph (c)(5)(i) of § 236.1 and renumbers the remaining paragraphs (c)(5)(ii), (iii), and (iv). The effect of this change is that inadmissible aliens, except for arriving aliens, have available to them bond redetermination hearings before an immigration judge, while arriving aliens do not.

62 F.R. 10312, 10323 (March 6, 1997). Compare 62 F.R. 10312, 10361 [236.1(c)(5)(i)] with 62 F.R. 444, 483 [236.1(c)(5)(i)].

In other words, the BIA's assertion in *Yajure Hurtado* that the Immigration Judges do not have authority to adjudicate bonds for any inadmissible alien, (otherwise defined in 8 U.S.C. § 1225(a) as an "applicant for admission") was considered and explicitly rejected when the implementing regulations were published in 1997. As Petitioner wrote in his Petition for Writ of

Habeas Corpus, the Ninth Circuit has held that an executive branch agency such as the BIA cannot ‘overrule’ by adjudication regulations that were promulgated after notice and comment. *Patel v. INS*, 638 F.2d 1199, 1202 (9th Cir. 1980). [“Thus, by adjudication, the Board attempted to add a requirement to the 1973 regulation which had been expressly discarded during its rule-making proceedings.”] And yet that is precisely the action that Respondents are here asking this Court to validate, as they ask this Court to sustain the BIA’s decision in *Yajure Hurtado* that Immigration Judges do not have authority to grant bond to any member of the entire class of “inadmissible aliens” otherwise known as “applicants for admission.”

4. ***Precedent and Policy Prior to 2025***

The Respondents assert that because Petitioner has never been admitted, he could only ever, as a matter of law, be detained pursuant to 8 U.S.C. § 1225. But as the above statutory and regulatory history documents, the Respondents’ recent reinterpretation of the statutory text finds little support in the legislative history, and is directly opposed to the clear choice of the March 1997 implementing regulations. Respondents’ reading of the text collapses into one indivisible class labeled “applicants for admission” all individuals present without admission, regardless of circumstances. But the statutory text recognizes subclasses. *Maldonado Bautista* defined a specific class of individuals who had been detained in the nation’s interior without prior detention at the border. *Maldonado Bautista*, 5:25-cv-01873-SSS-BFM *2 (C.D. Cal. Nov. 25, 2025), Order Granting Plaintiff Petitioners’ Motion for Class Certification. Petitioner is not part of that class, because Petitioner was detained at the U.S. border after he initially entered without inspection. But neither is Petitioner an “arriving alien” as defined by 8 C.F.R. § 1.2:

Arriving alien means an applicant for admission coming or attempting to come into the United States at a port-of-entry, or an alien seeking transit through the United States at a port-of-entry, or an alien interdicted in international or United States waters and brought

into the United States by any means, whether or not to a designated port-of-entry, and regardless of the means of transport.

8 C.F.R. § 1.2. *See also*, *Dkt. 1x2* Exhibit B (arriving alien box not checked). Petitioner did not apply for admission at a port of entry, nor was he “brought into the United States”. That puts Petitioner into a third class. The entire preceding analysis is nevertheless relevant to deciding his Petition for Writ of Habeas Corpus, because for the last nearly thirty years, the government policy has been that DHS has the right to choose how it wishes to detain and process individuals who are encountered in the U.S. near the U.S. border. As recently as 2022 Respondents’ predecessors insisted in oral argument before the Supreme Court that:

DHS’s long-standing interpretation has been that 1226(a) [discretionary detention] applies to those who have crossed the border between ports of entry and are shortly thereafter apprehended. So that’s an important category of the group of non-citizens that we’re talking about here. And it memorialized that understanding in regulations shortly after IIRIRA was enacted, and as well that has been the agency’s consistent interpretation across the -- the subsequent 25 years.

Solicitor General, Transcript of Oral Argument at 44:24–45:9, *Biden v. Texas*, 597 U.S. 785 (2022) (No. 21-954)).² The District Court in *Cordero Pelico v. Kaiser*, 3:25-cv-07286-EMC (N.D. Cal. Oct. 3, 2025) noted that “in its briefing before this Court, the Government acknowledges that ‘until recently,’ it considered § 1226(a) to be an available detention authority for noncitizens who might also be subject to § 1225.” *Cordero Pelico*, at 6.

The Massachusetts District Court in *Martinez v. Hyde*, 1:25-cv-11613-BEM (D. Mass July 24, 2025) was one of the first courts to analyze and address directly the Respondents’ policy changes and supporting arguments asserting that individuals like Petitioner, who had previously

² https://www.supremecourt.gov/oral_arguments/argument_transcripts/2021/21-954_m6hn.pdf

been detained on the border, and released pursuant to §1226 (a), are now subject to mandatory detention without bond pursuant to §1225(b)(2)(A). *Martinez* at 5-17. The court in that case found that the petitioner, like this Petitioner, had been issued an “Order of Release” that “explicitly premises her release on section 1226 (‘[i]n accordance with section 236 of the Immigration and Nationality Act.’ *Id.* at 5-6. The court continued “Section 1226 governs a separate (non-mandatory) detention scheme applicable when an individual is ‘already in the country.’ *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018).” *Id.* at 6.

The U.S. Supreme Court’s analysis of 8 U.S.C. § 1225 and § 1226 in *Jennings v. Rodriguez*, 583 U.S. 281, (2018) recognizes the primary distinction at issue, stating:

In sum, U. S. immigration law authorizes the Government to detain certain aliens seeking admission into the country under §§ 1225(b)(1) and (b)(2). It also authorizes the Government to detain certain aliens already in the country pending the outcome of removal proceedings under §§ 1226(a) and (c).

Jennings at 289. Note the clear recognition that while “aliens seeking admission” (or arriving aliens, as defined in the regulations) are subject to detention under §§ 1225(b)(1) and (b)(2), “aliens already in the country may be detained . . . under §§ 1226(a) and (c).” The Supreme Court further wrote “As noted, § 1226 applies to aliens already present in the United States. Section 1226(a) creates a default rule for those aliens by permitting— but not requiring—the Attorney General to issue warrants for their arrest and detention pending removal proceedings.” *Id.* at 303. In other words, the Supreme Court in *Jennings* recognized that 8 U.S.C. § 1225(b) applied only to the subclass of “applicants for admission” who were actually “seeking admission” at the border. The other subclass of “applicants for admission”: “an alien present . . . who has not been admitted” or “certain aliens already in the country” or “aliens already in the country” may be detained under § 1226(a). *Jennings* does not support a legal conclusion that

individuals who are not seeking admission, who are already present in the United States, are subject to mandatory detention without bond pursuant to 8 U.S.C. § 1225 (b).

Petitioner entered the U.S. without inspection. He did not seek admission or apply for admission; he has never applied for any legal status or adjustment of status or in any other way sought lawful admission to the United States. He was encountered and detained at the border by Customs and Border Patrol agents. But at the time he was encountered and detained it was the explicit policy of the U.S. Government that DHS agents had the lawful authority to affirmatively choose how to process aliens encountered at the border who had entered without inspection, who had never actually, factually applied for admission. In 2023 the CBP officers chose to process Petitioner pursuant to the provisions of 8 U.S.C. § 1226 (a), as explicitly noted on the Order of Release on Recognizance he was given on November 21, 2023, *Dkt 1x2*, Ex. C. He thereafter filed his application for asylum and was scheduled, along with his wife and son, for a final removal hearing before the Immigration Court in May 2026. Respondents do not assert that Petitioner at any point in time applied for admission into the United States. Respondents merely assert that Congress in 1996 intended the entire class of “applicants for admission” without regard to subclass, to be subject to mandatory detention.

5. ***Retroactivity of Government Policy***

Even if the court were to conclude that none of the above—not the language of the statute itself, not the legislative history, not the constitutional context, not the adjudicatory overruling of a prior explicit rulemaking decision—is sufficient to establish that 8 U.S.C. § 1225(b)(2)(A) does not provide legal authority for Petitioner’s detention, the court should nevertheless hold that retroactive reclassification of this Petitioner violates his constitutional right to due process of law.

In agreement with the Court's discussion in *Jennings*, district court judges across the United States have recognized that until 2025 the government regularly chose to process individuals like this Petitioner (who crossed the border without seeking admission) pursuant to the provisions of §1226(a). Those courts have agreed that the Respondents' preferred reading, that all 'applicants for admission' are subject to mandatory detention pursuant to § 1225(b), was first published internally as agency policy on July 8, 2025.³

On July 8, 2025, DHS instituted a notice titled "Interim Guidance Regarding Detention Authority for Applicants for Admission" to all ICE Employees.[2] The Notice indicated that DHS, in coordination with the DOJ, "revisited its legal position" on the INA and determined that § 1225(b)(2), rather than § 1226, is the applicable immigration authority for any alien present in the U.S. "who has not been admitted. . . whether or not at a designated port of arrival." [3] Accordingly, "it is the position of DHS that such aliens are subject to [mandatory] detention under INA § 235(b) and may not be released from ICE custody except by INA § 212(d)(5) parole." [4] The Notice further provides "[t]hese aliens are also ineligible for a custody redetermination hearing (bond hearing) before an immigration judge and may not be released for the duration of their removal proceedings absent a parole by DHS. For custody purposes, these aliens are now treated in the same manner that 'arriving aliens' have historically been treated." [5]

³ See, e.g., *Martinez, supra*, ftns 10-11, *10; *Vazquez v. Feeley*, 2:25-cv-01542-RFB-EJY *8-9, *10-11 (D. Nev. Sep 17, 2025); *Vega v. Arnott*, 6:25-cv-3097-MDH *6 (W.D. Mo. Feb. 20, 2026); *Roshniashvili v. Allen*, 2:26-cv-0093-ICB, *6-8 (S.D. W. Va. Feb. 17, 2026); *Trejo v. Bullock*, 3:26-cv-47 *4-6 (E.D. Tenn. Feb 13, 2026); *Escobar-Salgado v. Mattos*, 2:25-cv-01872-RFB-EJY *2; 8-9 (D. Nev. Nov. 17, 2025)

Vazquez v. Feeley, 2:25-cv-01542-RFB-EJY *8-9 (D. Nev. Sep. 17, 2025). The BIA ratified the new statutory interpretation in September 2025 with the publication of *Matter of Yajure Hurtado*, *supra*.

It is undisputed that DHS and EOIR are free to adopt new policies. But any attempt to apply the new policy or new interpretation retroactively, must comply with constitutional principles. As Justice Gorsuch wrote in 2015:

A statute, order, or edict "operates retroactively" when it seeks to impose "new legal consequences to events completed before its" announcement. *INS v. St. Cyr*, 533 U.S. 289, 321, 121 S. Ct. 2271, 150 L. Ed. 2d 347 (2001).

De Niz Robles v. Lynch, 803 F.3d 1165, 1168 (10th Cir. 2015). Petitioner has provided to this Court the documents that establish that when he was detained at the U.S. border in January 2023, he was processed and released pursuant to 8 U.S.C. § 1226. Petition Exhibits B; C. Respondents now assert, three years later, that Petitioner is subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)(2)(A). This is an unmistakable attempt by Respondents to retroactively impose their new interpretation of the statute onto events completed more than three years ago. While the U.S. Supreme Court in *SEC v. Chenery Corp. (Chenery II)*, 332 U.S. 194, 202-03, 67 S. Ct. 1575, 91 L. Ed. 1995 (1947) allowed for retroactive effect of agency adjudicatory decisions, the Court noted that because agencies, "unlike a court, [do] have the ability to make new law prospectively through the exercise of its rule-making powers, [they have] less reason to rely upon ad hoc adjudication." The Court nevertheless found that there were circumstances where rule-making via the adjudicatory process could be justified:

[P]roblems may arise in a case which the administrative agency could not reasonably foresee, problems which must be solved despite the absence of a relevant general rule. Or the agency may not have had sufficient experience with a particular problem to warrant rigidifying its tentative judgment into a hard and fast rule. Or the problem may be so specialized and varying in nature as to be impossible of capture within the boundaries of a general rule.

Chenery II at 202-203. But as the analysis of the preceding sections documents, neither the Respondents' new statutory interpretation policy announced July 8, 2025, nor the ratification of that statutory interpretation in *Yajure Hurtado* are novel nor applicable to a specialized problem with which the agency had insufficient prior experience. In *De Niz Robles*, *supra*, Justice Gorsuch wrote that where an agency via adjudication replaces one legal interpretation of an arguably ambiguous statute with another interpretation, the new interpretation may not be applied retroactively. *See, e.g., De Niz Robles* at 1173-1176. Justice Gorsuch's decision was issued years before the Supreme Court's decision overruling the principles of Chevron and Brand X deference that had previously granted Executive Branch agencies primacy and interpretive control over arguably ambiguous statutes. *See, Loper Bright v. Raimondo* 603 U.S. ____ (2024). In the present circumstances there is nothing in the facts or the law that would support retroactive application of the agency's new statutory interpretation to actions completed in the past. On very similar facts, Judge Silva of the District Court of Nevada wrote:

DHS's reclassification of Beltrand as an "applicant for admission" pursuant to § 1225, and related determination that he is ineligible for a bond, violated his due process rights.

Baca-Beltran v. Mattos, 2:25-cv-01430-CDS- EJY, *6 (D. Nev. Nov. 14, 2025). Like the facts presented to the District Court of Nevada in *Baca-Beltran v. Mattos*, DHS is here asserting the right to retroactively reclassify this Petitioner. Like the District Court of Nevada and numerous other courts,⁴ the court should find that Respondents' argument for the retroactive reclassification of Petitioner from § 1226 to § 1225(b)(2)(A) more than two years after his entry violates the Petitioner's constitutional right to due process of law.

V. CONCLUSION

The Respondents' legal position, as announced in *Matter of Yajure Hurtado*, and supported by the 5th Circuit's split panel decision in *Buenrostro-Mendez v. Bondi*, 25-20496 (5th Cir. February 6, 2026), amounts to the claim that for nearly thirty years the regulations stating that inadmissible aliens detained within the United States were subject to detention pursuant to 8 U.S.C. § 1226(a) were unlawful, *ultra vires*. But the governments' implicit argument that its policies and procedures over the past 29 years have been invalid and illegal, and the Respondents' argument that the statutory language can only be read and interpreted as they now propose to do, are unsupported by the Congressional record or the statutory text. As this Court

⁴ See also, *J.U. v. Maldonado*, 1:25-cv-04836-OEM (ED. NY September 29, 2025); *Cordero-Pelico*, *supra*, 12-15; *Kashranov v. Jamison*, 2:25-cv-05555-JDW (ED PA Nov. 14, 2025); *Teyim v. Perry*, 1:25-cv-01615-MSN (E.D. Va. Oct. 15, 2025); *Roshniashvili v. Allen*, 2:26-cv-0093-ICB, *6-8 (S.D. W. Va. Feb. 17, 2026); *Lopez-Arevalo v. Ripa*, EP-25-cv-337-KC (W.D. Tex. Sept 22, 2025); *Rodriguez Carmona v. Noem*, 1:25-cv-1131-PLM (W.D. Mich. Oct. 24, 2025); *Camacho Salinas v. Woosley*, 4:25-cv-121-DJH (W.D. Ky. Nov. 20, 2025); *Delgado-Avila v. Crowley*, 2:25-cv-00533-MPB- MJD (SD Ind. Nov. 13, 2025); *H.M. v. Wofford*, 1:25-cv-01309-JLT-SKO (ED Calif. Oct. 14, 2025); *Salcedo Aceros v. Kaiser*, 3:25-cv-06924-EMC (N.D. Cal. Sept 12, 2025); *Roa v. Albarran*, 3:25-cv-07802 (N.D. Calif. Sept. 25, 2025); *Ocampo-Fernandez v. Ripa*, 1:25-cv-24981-DSL (S.D. Fla. Nov. 25, 2025); *Diaz v. Knight*, 2:26-cv-00247- RFB-DJA (D. Nev. Feb 12, 2026); *Patel v. O'Neill*, 3:25-cv-02289 KM * (M.D. Pa. Feb 06, 2026).

and numerous federal courts have found in the last few months, Respondents' reinterpretation contradicts and ignores the Congressional history, the regulatory history, the regulations themselves, and the intervening precedent. *See, e.g., Maldonado-Vazquez v. Feeley*, 2:25-cv-01542-RFB-EJY, 6-8, (D. Nev. Sep 17, 2025); *Martinez v. Hyde*, 1:25-cv-11613, 2025 WL 2084238 (D. Mass. July 24, 2025); *Pablo-Sequen v. Kaiser*, 25-cv-06487-PCP, 2025 WL 2650637 (N.D. Cal. Sept. 16, 2025), subsequent decision 2025 WL 2935630 (N.D. Cal. Oct. 15, 2025); *Lopez-Arevalo v. Ripa*, EP-25-cv-337, 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025); *Santiago-Helbrum v. Williams*, 4:25-cv-00349-SHL-SBJ, (S.D. Iowa Sept. 30, 2025); *Quispe-Ardiles v. Noem*, 1:25-cv-01382-MSN-WEF, 2025 WL 2783800 (E.D. Va. Sept. 30, 2025); *Cordero Pelico, et. al. v. Kaiser*, 25-cv-07286-EMC, 2025 WL 2822876 (N.D. Cal. Oct. 3, 2025); *Sanchez-Ballesteros v. Noem, et.al.*, 3:25-cv-594-RGJ, 2025 WL 2880831 (W.D. Ky. Oct. 9, 2025); *Ochoa-Ochoa v. Noem*, 25-cv-10865, 2025 WL 2938779 (N.D. Ill. Oct. 16, 2025).

Respondents' sole justification for redetaining this Petitioner is their reinterpretation of the statutory language. Respondents believe that Petitioner was improperly classified over two years ago, and that it is neither a statutory nor constitutional violation to now reclassify him—over two years after his release on recognizance—from a non-citizen released pursuant to § 1226 to a non-citizen subject to mandatory detention pursuant to § 1225(b)(2). Ultimately, the agency's desired interpretation of the statute remains nothing more than an invalid and unconstitutional attempt by an executive branch agency to impose via adjudication a statutory interpretation rejected in the Congressional Record and thereafter proposed and explicitly rejected as part of the implementing regulations.

VI. PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief:

- A. Declare that the Respondents may not subject Petitioner to detention without bond pursuant to their current interpretation of 8 U.S.C. §1225(b)(2)(A).
- B. Order that Petitioner be immediately Released, pursuant to the terms of the Immigration Judge's bond order, if Petitioner has not already been released;
- C. Award Petitioners attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis justified under the law; and
- D. Grant any other and further relief that this Court deems just and proper.

RESPECTFULLY SUBMITTED this 5th day of March, 2026.

STOWELL CRAYK PLLC

/s/ Adam L. Crayk
Attorney for Petitioners

/s/ Marti L. Jones
Attorney for Petitioners