



I. SUMMARY OF OPPOSITION ARGUMENTS

The Respondents reassert their legal argument, incorporating by reference to their Response filed in *Jacobo-Ramirez v. Noem*, 2:25-cv-02136-RFB-MDC, (D. Nev. Oct. 30, 2025) that Petitioners, deemed by law to be “applicants for admission” 8 USC § 1225(a) are therefore ipso facto “seeking admission” at the time they were detained. According to Respondents’ reading of 8 U.S.C. 1225(b)(2)(A) all those deemed applicants for admission are, apparently solely *by virtue of that deemed 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).

The Respondents also assert that as a factual matter both Petitioners have been charged with crimes and therefore do not qualify for bond.

Petitioners will address these arguments in reverse order.

II. ARGUMENT

A. Factual Ineligibility

Petitioners in this matter have not asked this Court to assess or determine their eligibility for a bond. Petitioners understand that question to be more appropriately addressed by the Immigration Judge in bond proceedings. The sole issue presented to this Court is the question of whether or not these Petitioners are legally and lawfully detained by Respondents *indefinitely, without a bond hearing*. As a factual matter, both Petitioners have been present in the United States for more than five years. Neither has had any prior encounter—at the border or in the interior—with immigration authorities. Neither has, at any time, filed any application or formally asked for lawful admission to the United States.

Respondents also assert as a factual barrier to relief that neither Petitioner has asked for a bond hearing. Respondents stop short, however, of asserting that Petitioners have failed to

exhaust their administrative remedies, because, as this Court knows well, the nation's Immigration Judges are precluded from hearing requests for bond by the Respondents' legal interpretation of the statute. Therefore, any attempt to seek a bond without first obtaining an order from this Court would be futile.

B. Respondents' Legal Argument 8 U.S.C. § 1225 not 8 U.S.C. § 1226.

The government asserts that because Petitioners, as individuals present in the U.S. without lawful admission, are deemed by 8 U.S.C. § 1225(a) to be "applicant(s) for admission," they are inescapably and permanently subject to mandatory detention pursuant to the terms of 8 U.S.C. § 1225(b), including 8 U.S.C. § 1225(b)(2)(A). The government's analysis fails to recognize the explicit distinctions between Immigration and Nationality Act's (INA) precise classifications and sub classifications. More specifically, the government's analysis erases a deliberate, congressionally created, subdivision in the larger class of noncitizens classified by law as "applicants for admission." The government then asserts, having erased the subdivision, that the statutory provisions congress explicitly made applicable solely to a subdivision of the larger class now apply to the entire class.

In response to the Respondents' legal arguments, Petitioners note that repeatedly, throughout the referenced argument from *Jacobo-Ramirez*, 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 conflate "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 very 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 therefore cannot, constitutionally, be subject to the same detention regime.

1. The Statutory Text and the Record of Congressional Intent

In 8 U.S.C. § 1225(a), revised and 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), Congress defines a large class, that of “applicants for admission” in contrast and opposition to aliens who have been lawfully admitted. Congress created this class in IIRIRA specifically in order to collapse the prior legal distinctions between exclusion and deportation proceedings. *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, in IIRIRA, Congress deliberately created and defined the class of “applicants for admission” and explicitly added provisions to 8 U.S.C. § 1182 so as to collapse what it 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. With the enactment of IIRIRA Congress intentionally divided all non-citizens into two large classes: admitted aliens and inadmissible aliens. The class of admitted aliens can be further subdivided into admitted aliens who remain in lawful status, and those admitted aliens who are subject to the grounds of removal found at 8 U.S.C. § 1227, while the class of inadmissible aliens is also known as “applicants for admission” and was also deliberately subdivided by Congress in IIRIRA.

As the statutory language makes clear, 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 draws very careful lines. The class of inadmissible aliens, also known as “applicants for admission” is defined in opposition to the class of “admitted but removable” aliens. Congress in IIRIRA added 8 U.S.C. § 1182(a)(6)(A)(i) explicitly to ensure that all noncitizens who had not been lawfully admitted or paroled would be charged with a ground of inadmissibility:

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 also explicitly 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, (although 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, also known as “arriving aliens.” 8 C.F.R. § 1.2. Note that the definition of “Arriving alien” references the larger “applicant for admission” class, but specifies that arriving aliens are a subgroup of that class, who are “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.” *Id.*

Congress had solid constitutional reasons for distinguishing between the subclass of “arriving alien” applicants for admission at the nation’s borders, and those merely deemed ‘applicants for admission’ as a legal fiction for purposes of removal proceedings. Principal among those reasons 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 referenced 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--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 arriving at the nations’ borders, 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*; *Reno v. Flores*. 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.

2. 8 U.S.C. § 1225 Arriving Aliens (Aliens Seeking Admission)

It is precisely because of these constitutional due process requirements that, following the combination of “arriving aliens” and “aliens present without admission” into one single class of “applicants for admission” in 8 U.S.C. § 1225(a), Congress carefully distinguishes and focusses on actual “arriving alien” applicants for admission throughout the remainder of 8 U.S.C. § 1225. The provisions of (b)(1)(A) are explicitly applied to any “alien who is arriving” in the U.S. For the same constitutional reasons, 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. The BIA’s reading of the text in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), supported and argued to be controlling by the Respondents, renders superfluous that ‘seeking admission’ clause. The BIA and Respondents seek to interpret the text to expand the most restricted form of constitutional due process—that provided to non-citizen aliens seeking admission at the U.S. borders—throughout the entire territory of the United States. In *Landon v. Plascencia*, 459 U.S. 21, 33 (1982) the Supreme Court wrote that “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 order to reduce the constitutional rights of noncitizens within the U.S., the BIA and the Defendants would read the “seeking admission” qualifier completely out of the text of § 1225(b)(2)(A). Instead, they prefer to read 8 U.S.C. § 1225(b)(2)(A) to say: “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.” Respondents’ reading

effectively converts every immigration agent throughout the entire United States into an examining officer, as though at the nation's border.

But Congress deliberately included that syntactically awkward “seeking admission” phrase to reemphasize that the examination procedures laid out in 8 U.S.C. § 1225 are applicable *at the nation's borders*. Threaded through the Report of the House Judiciary Committee's explication of the text of INA § 235/8 U.S.C. § 1225, are the qualifiers: “arriving alien” “aliens seeking admission” “an alien applying for admission” “aliens arriving”. Regarding the (b)(2) provisions at issue here, Congress explicitly applies them to “inspection of other arriving aliens”. *House Judiciary Report, No. 104-469 supra* at 229.

3. The Implementing Regulations

As summarized in Petitioners' 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’ new interpretation of the statutory language. That is the case because Respondents’ predecessor agencies initially proposed regulations which would have done precisely what Respondents now assert Congress intended. 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 Petitioners wrote in their 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. Governing DHS Policy Prior to 2025

The government’s argument boils down to the claim that—read and interpreted as they chose to read and interpret the statutory language in 2025—because Petitioners have not been lawfully admitted, they 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’ interpretation of the statutory text finds no support in the legislative history, and is directly opposed to the clear choice of the March 1997 implementing regulations. 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, and that the provisions of 8 U.S.C. § 1226(a) applied to all individuals present without admission who are encountered for the first time within the interior of the United States. This is supported by the judge’s finding in *Cordero Pelico v. Kaiser*, 3:25-cv-07286-EMC (N.D. Cal. Oct. 3, 2025):

[T]he government has conceded in other contexts 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.” Dkt. No. 17 (citing Solicitor General, Transcript of Oral Argument at 44:24–45:2, *Biden v. Texas*, 597 U.S. 785 (2022) (No. 21-954)). And 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. See also, *Martinez v. Hyde*, 1:25-cv-11613-BEM, at 9, fn. 9.

Petitioners each entered the U.S. without inspection. They did not seek admission or apply for admission; neither Petitioner has ever applied for any legal status or adjustment of status or in any other form sought lawful admission to the United States. Both were encountered and detained *in Utah* by Immigration and Customs Enforcement Customs and Border Patrol, pursuant to explicit targeted enforcement after each became involved with the Utah State Courts. Both Petitioners have been residing in the United States without any contact with immigration authorities for extended periods of time. Respondents do not assert that Petitioners have 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.

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 distinctions 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).*” (Emphasis added).

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 “applicants for admission” subclass: “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 country, who have never sought admission, are subject to detention pursuant to 8 U.S.C. § 1225(b).

The governments’ policy, as announced in *Matter of Yajure Hurtado*, and supported by the 5th Circuit’s split panel decision in *Buenrostro-Mendez v. Bondi*, 2026 U.S. App. LEXIS 3899 (5th Cir. 2026) (Respondents’ Exhibit G), amounts to a legal conclusion 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 merely because Congress has suddenly granted the U.S. government enormous sums of money to fund detention does not magically erase all the government’s prior regulatory choices. 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 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). 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.

PRAYER FOR RELIEF

WHEREFORE, Petitioners pray that this Court grant the following relief:

- a. Assume jurisdiction over this matter.
- b. Issue writs of habeas corpus requiring that Respondents immediately provide Petitioners Reyes-Ortiz and Huerta-Espinosa with bond hearings, and that Petitioners be allowed to post the bonds and be released.
- c. Declare that the Petitioners continued detention without bond or any individualized determination of danger or flight risk violates the Due Process Clause of the Fifth Amendment;
- d. Issue an Order prohibiting the Respondents from transferring Petitioners from the district without the court's approval.

e. 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

f. Grant any other and further relief that this Court deems just and proper.

RESPECTFULLY SUBMITTED this 17th day of February, 2026.

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