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6 UNITED STATES DISTRICT COURT
7 DISTRICT OF NEVADA

8 LEOBARDO GARCIA RINCON,
9 Petitioner,

Case No. 2:26-cv-00396-RFB-BNW

1 v.

0 THOMAS E. FEELEY, Director of
Enforcement and Removal Operations, Salt
1 Lake City Field Office, Immigration and
Customs Enforcement; KRISTI NOEM,
1 Secretary, U.S. Department of Homeland
Security; U.S. DEPARTMENT OF
1 HOMELAND SECURITY; PAMELABONDI,
U.S. Attorney General; EXECUTIVE OFFICE
2 FOR IMMIGRATION REVIEW; JOHN
MATTOS, Warden of NEVADA SOUTHERN
1 DETENTION CENTER, in their official
capacities

3 Respondents.

**PETITIONER'S TRAVERSE TO
FEDERAL RESPONDENTS'
RESPONSE TO ORDER TO SHOW
CAUSE**

INTRODUCTION

Petitioner Leobardo Garcia Rincon respectfully submits this Traverse to the Federal Respondents' Response to the Order to Show Cause regarding his Petition for Writ of Habeas Corpus. This case presents a straightforward question of statutory interpretation with significant constitutional implications: whether Petitioner, a Mexican national who has resided in the United States for approximately eighteen years since entering without inspection in 2008, is subject to mandatory detention under 8 U.S.C. § 1225(b)(2) as an "applicant for admission," or whether his detention should be governed by 8 U.S.C. § 1226(a), which would entitle him to a bond hearing.

Federal Respondents contend Petitioner is subject to mandatory detention under § 1225(b)(2) based on the Board of Immigration Appeals' recent decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). That decision, however, has since been vacated by a federal district court in California and therefore carries no binding or persuasive authority. Even part from the vacatur, *Hurtado* contradicts the statutory text, constitutional principles, longstanding agency practice, and this Court's consistent rulings in similar cases. Respondents further rely on the Fifth Circuit's decision in *Buenrostro-Mendez v. Bondi*, 2026 U.S. APP. LEXIS 3899 (5th Cir. 2026), which is not binding on this Court and carries no precedential authority in this Ninth Circuit district. This Court remains bound by Ninth Circuit law and its own consistent precedent recognizing bond jurisdiction under § 1226(a) for similarly situated interior residents. Petitioner respectfully requests that the Court grant the writ of habeas corpus to the extent of ordering a bond hearing consistent with due process and proper statutory interpretation.

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FACTUAL BACKGROUND

Petitioner Leobardo Garcia Rincon is a citizen of Mexico who entered the United States without inspection in or about 2008 at an unknown location. Since that time, he has resided continuously within the United States for approximately eighteen years. He is the father of three U.S. citizen children: Allison age 17, Alfredo, age 13, and Sofia age 5. His son, Alfredo, suffers from asthma and requires ongoing medical treatment. Petitioner operates a landscaping business and has been the primary financial provider for his family.

On January 24, 2026, Immigration Customs Enforcement (“ICE”) arrested Petitioner during a targeted immigration enforcement operation aimed at another individual for whom ICE had issued an administrative warrant. Petitioner was not the subject of the warrant. After querying the license plate of his trailer and following him, ICE officers conducted a stop and arrested him. He has remained in ICE custody continuously since that date.

Respondents have improperly classified Petitioner under 8 U.S.C. 1225(b)(2)(A), a statute *reserved for arriving aliens* and denied him bond jurisdiction pursuant to *Matter of Yajure-Hurtado*.

Petitioner is detained under 8 U.S.C. § 1226(a), which permits release on bond. The government's new interpretation of § 1225(b)(2) contradicts statutory text, legislative history, and longstanding agency practice. This classification is legally erroneous and contrary to the reasoning of the District of Nevada in Case No. 2:25-cv-01819-RFB-BNW, which granted habeas relief to a similarly situated long-term interior resident. Section 1225(b)(2)(A) applies only to arriving aliens, not long-term interior residents like Petitioner.

1 Petitioner's continued detention violates statutory and constitutional limits governing
2 immigration detention, as confirmed by Supreme Court, Ninth Circuit, and district court
3 precedent. Thus, Respondents' reliance on that statute is unlawful.

4 Petitioner's continued detention without a bond hearing violates both statutory constraints
5 and constitutional requirements required by the Supreme Court, Ninth Circuit and all relevant
6 district courts.

7 Petitioner has received no individualized custody review, and the automatic stay
8 provision under 8 C.F.R. § 1003.19(i)(2) deprives Petitioner of meaningful procedural
9 safeguards, resulting in arbitrary and unreasonably prolonged detention.

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11 Petitioner's continued detention has resulted in exceptional and extremely unusual
12 hardship to his U.S. Citizen children, particularly Alfredo, who requires ongoing medical
13 treatment. Relocation to a country with limited medical resources and instability will worsen
14 these emotional challenges, especially during adolescence, critical developmental period.
15 *Figueroa v. Mukasey*, 543 F.3d 487 (9th Cir. 2008), impliedly overruled on other grounds in
16 *Abebe v. Mukasey*, 554 F.3d 1203 (9th Cir. 2009) *Ramirez-Perez v. Garland*, No. 19-73276,
17 2024 WL 885133, at *1 (9th Cir. Mar. 1, 2024) significant medical needs of qualifying children
18 are central to hardship analysis.

19 Alfredo's hardship is compounded because Petitioner is, for all practical purposes, the
20 primary source of financial support, emotional stability and logistical coordination for his
21 medical treatment. Continued detention will cause immediate and severe disruptions to his
22 medical treatment, which goes well beyond ordinary hardship. The loss of financial support
23 directly exacerbates the medical hardship recognized by court such as *Figueroa v. Mukasey*,
24 *supra*, where inability to afford ongoing care was a major hardship factor.
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1 Petitioner's continued detention is not merely a family separation. It directly threatens the
2 son's ability to receive life-altering medical care. This factor alone, combined with other
3 hardship elements substantially meets the "exceptional and extremely unusual hardship"
4 standard.

5 On January 24, 2026, Immigration Customs Enforcement ("ICE") arrested Petitioner and
6 issued a Notice to Appear (NTA) charging him with removability under INA §§ 212(a)(6)(A)(i)
7 and 212(a)(7)(A)(i)(I) for unlawful entry and lack of valid entry documents. Petitioner was
8 placed in removal proceedings under 8 U.S.C. § 1229a.

9 The Immigration Judge denied bond, finding that Petitioner is subject to mandatory
10 detention as an "applicant for admission" under 8 U.S.C. § 1225(b)(2), citing the Board of
11 Immigration Appeals' (BIA) recent decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216
12 (BIA 2025). That decision has since been vacated by a federal court in California, eliminating
13 any legal force upon which Respondents now rely. Petitioner has not appealed the bond denial to
14 the BIA.

15 Petitioner challenges the lawfulness of his detention without bond, asserting that the
16 statutory framework governing his detention is 8 U.S.C. § 1226(a), which permits bond hearings,
17 rather than the mandatory detention provisions of § 1225(b)(2). The Federal Respondents
18 acknowledge that this Court has consistently ruled in favor of similarly situated petitioners in
19 multiple cases, finding they are entitled to bond hearings, yet ask this Court to depart from its
20 precedent based on the BIA's recent decision in *Hurtado* and out-of-circuit district court
21 decisions. More specifically, the Federal Respondent's cite the Fifth Circuit's interpretation in
22 *Buenrostro-Mendez v. Bondi*, 2026 U.S. APP. LEXIS 3899 (5th Cir. 2026) which fundamentally
23 misreads the statutory text of 8 U.S.C. § 1225(b)(2)(A). The statute requires that an alien be both
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1 an applicant for admission and seeking admission to trigger mandatory detention. The majority's
2 conclusion that these terms are synonymous violates basic principles of statutory construction. In
3 any event, *Buenrostro-Mendez* is not binding precedent in the Ninth Circuit and cannot override
4 this Court's consistent rulings applying § 1226(a) to long-term interior residents.

5 The ordinary meaning of "seeking" requires present, active conduct. As defined in
6 standard dictionaries, seek means to go in search of to look for to ask for and to try to acquire or
7 gain. The present participle seeking signals present and continuing action. When Congress uses
8 different terms in the same statutory provision, courts must presume they have different
9 meanings. *Sunday v. AG United States*, 832 F.3d 211 (3d Cir. 2016). The statutory definition of
10 admission as "the lawful entry of the alien into the United States after inspection and
11 authorization by an immigration officer" supports this interpretation. Aliens apprehended in the
12 interior years after unlawful entry are not actively pursuing lawful entry through inspection
13 procedures. They are not seeking admission in any meaningful sense of the term.

14 The Fifth Circuit's holding renders substantial portions of § 1226 superfluous,
15 particularly the recently enacted Laken Riley Act. Section 1226(c)(1) functions as § 1226's
16 mandatory detention provision for aliens with certain criminal convictions. The Laken Riley Act
17 expanded this list in 2025 to include additional offenses. If all inadmissible aliens were already
18 subject to mandatory detention under § 1225(b)(2)(A), these provisions would have been largely
19 unnecessary. Congress does not enact meaningless legislation. The principle that statutory
20 provisions should not be interpreted to render other provisions superfluous applies "even when
21 Congress enacted the provisions at different times". *Bilski v. Kappos*, 561 U.S. 593.

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SUMMARY OF ARGUMENT

Petitioner's detention should be governed by 8 U.S.C. § 1226(a), which provides for discretionary detention and bond hearings, rather than the mandatory detention provisions of 8 U.S.C. § 1225(b)(2). This conclusion is supported by two primary arguments:

First, the plain language of § 1225(b)(2)(A) applies only to aliens who are actively "seeking admission" at or near the time of entry, not to long-term residents like Petitioner who has been living in the United States for nearly eighteen years. The phrase "seeking admission" in § 1225(b)(2)(A) must be given independent meaning beyond the statutory definition of "applicant for admission," or it would be rendered superfluous. The Federal Respondents' interpretation—that all aliens present without admission are subject to mandatory detention regardless of their circumstances—leads to absurd results that Congress could not have intended and contradicts decades of agency practice.

Second, the principle of constitutional avoidance requires interpreting § 1225(b)(2) to permit bond hearings for long-term residents like Petitioner. The Fifth Amendment's Due Process Clause applies to all persons within the United States, including undocumented immigrants, and provides protection against arbitrary detention. As an individual's ties to the United States increase over time, so too does their constitutional status and the procedural protections to which they are entitled. Mandatory detention without an individualized bond redetermination raises serious constitutional concerns when applied to long-term residents who have developed significant ties to the United States.

For these reasons, the Court should hold that Petitioner's detention is governed by § 1226(a), which would entitle him to a bond hearing, rather than by § 1225(b)(2), which would subject him to mandatory detention.

ARGUMENT

**I. SECTION 1226(a), NOT SECTION 1225(b)(2), GOVERNS PETITIONER'S
DETENTION BECAUSE 1225(b)(2) APPLIES ONLY TO NONCITIZENS
ACTIVELY "SEEKING ADMISSION"**

The Immigration and Nationality Act (INA) establish distinct detention authorities depending on a noncitizen's posture in the removal process. These provisions must be interpreted in context and as part of a coherent statutory scheme. As the Supreme Court has explained, statutory meaning "may only become evident when placed in context," and courts must read statutes as "a symmetrical and coherent regulatory scheme." *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 120 S. Ct. 1291 (2000).

The INA provisions at issue appear in Part IV of Title 8, Chapter 12, which addresses "Inspection, Apprehension, Examination, Exclusion, and Removal." *Johnson v. Guzman Chavez*, 594 U.S. 523, 141 S. Ct. 2271 (2021). These sections proceed sequentially through the removal process: § 1225 addresses inspection of aliens and referrals for removal hearings; § 1226 authorizes detention pending removal decisions; and § 1231 governs detention after a removal order. *Id.* This sequential structure provides important context for interpreting the scope of each provision.

Two statutory provisions are central to this case:

1. First, 8 U.S.C. § 1225(b)(2)(A) provides that "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 1229 a of this title." 8 USCS § 1225.
2. Second, 8 U.S.C. § 1226(a) provides that "[o]n a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be

1 removed from the United States." This provision further states that the Attorney General
2 "may" either "continue to detain the arrested alien" or release the alien on bond or
3 conditional parole. 8 USCS § 1226.

4 The Supreme Court has recognized that § 1225(b)(2) is a "catchall provision that applies
5 to all applicants for admission not covered by [§ 1225(b)(1)]." *Jennings v. Rodriguez*, 583 U.S.
6 281, 138 S. Ct. 830 (2018). The Court has also held that §§ 1225(b)(1) and (b)(2) "mandate
7 detention of applicants for admission until certain proceedings have concluded." *Id.* However,
8 the Court did not address the specific question presented here: whether § 1225(b)(2) applies to
9 long-term residents who entered without inspection many years ago.
10

11 Petitioner entered the United States without inspection in 2008 and was arrested in the
12 interior in 2026. DHS placed him in § 240 removal proceedings. In this posture, the governing
13 detention statute is § 1226(a), not § 1225(b)(2)(A), which is framed in inspection terms and
14 applies when an alien is actively "seeking admission."

15 Until recently, DHS itself recognized that INA § 236(a) was the proper detention
16 authority for individuals "present without admission or parole" (PWAP) and charged directly
17 into § 240 proceedings. Now, DHS argues that INA § 235(b)(2)(A) is more favorable to its
18 position and asks this Court to abandon decades of precedent. The plain language, statutory
19 structure, and congressional intent confirm otherwise. INA § 236(a) has long governed custody
20 determinations for aliens already inside the country—those arrested and detained while living
21 here unlawfully. *See Lopez-Campos v. Raycraft*, No. 2:25-cv-12486, 2025 WL 2496379 (E.D.
22 Mich. Aug. 29, 2025).

23
24 Critically, INA § 235(b)(2)(A) provides that immigration officials "shall" detain "an
25 applicant for admission, if the examining immigration officer determines that an *alien seeking*

1 *admission* is not clearly and beyond a doubt entitled to be admitted.” This provision is directed to
2 arriving aliens at ports of entry or the border. *Id.*

3 DHS now claims the term “applicant for admission” includes not only arriving aliens but
4 also anyone present in the United States without admission or parole. See *Dep’t of Homeland*
5 *Sec. v. Thuraissigiam*, 591 U.S. 103, 139 (2020). But this reading ignores the statutory word
6 “seeking.” *Lopez-Campos, supra*. The phrase implies an ongoing act of seeking entry, which by
7 its nature occurs at inspection at the border—not years after someone has been living inside the
8 country. *Id.*

9
10 Petitioner was not “seeking admission” when apprehended after nearly eighteen years of
11 residence in the interior of the United States. There was no inspection, no port of entry, and no
12 examining officer. There is no logical interpretation that would find that Mr. Garcia Rincon was
13 actively “seeking admission” after having resided here, albeit unlawfully, for almost eighteen. *Id.*
14 Accordingly, INA § 235(b)(2)(A) does not apply.

15 This interpretation is consistent with the historical distinction between exclusion and
16 deportation proceedings that existed prior to IIRIRA. As the courts have explained, those
17 “seeking ‘admission’ and trying to avoid ‘exclusion’ were already within our territory (or at its
18 border), but the law treated them as though they had never entered the United States at all; they
19 were within United States territory but not ‘within the United States.’” *Patel v. McElroy*, 143
20 F.3d 56 (2d Cir. 1998). In contrast, those “who had been admitted (or found their way in) but
21 sought to avoid ‘expulsion’ had the added benefit of ‘deportation proceedings’; they were both
22 within United States territory and ‘within the United States.’” *Id.* While IIRIRA eliminated the
23 formal distinction between exclusion and deportation proceedings, merging them into “removal”
24 proceedings *Cruz-Miguel v. Holder*, 650 F.3d 189 (2d Cir. 2011), it did not eliminate the
25

1 substantive distinction between aliens at the border seeking entry and those who have been living
2 in the country for extended periods. The phrase "seeking admission" in § 1225(b)(2)(A)
3 preserves this distinction by limiting mandatory detention to those actively attempting to gain
4 admission.

5 As one court recently explained, the government's "sweeping and unlimited reading of
6 'applicants for admission' ignores the fact that that term is further limited in § 1225(b)(2) by the
7 active construction of the phrase 'seeking admission' which entails some kind of affirmative
8 action taken to obtain authorized entry." *Echevarria v. Bondi*, No. CV-25-03252, 2025 U.S. Dist.
9 LEXIS 196174 (D. Ariz. Oct. 3, 2025).

10 Accordingly, § 1225(b)(2)(A) does not apply to long-term residents like Petitioner. The
11 proper detention authority is § 1226 (a), which governs individuals arrested within the United
12 States and expressly provides for bond hearings.

13
14 **II. INA § 236 (A) PROVIDES THE PROPER AUTHORITY FOR THE IJ'S**
15 **CUSTODY REDETERMINATION.**

16 By contrast, INA § 236 (a) squarely applies here. It provides that upon "a warrant issued by
17 the Attorney General; an alien may be arrested and detained pending a decision on whether the
18 alien is to be removed." *Id.* The statute expressly authorizes bond determinations by an IJ for
19 aliens in § 240 proceedings.

20 Respondent has been physically present in the U.S. since 2008 without admission or
21 parole. He was arrested and detained. He is in § 240 proceedings, charged under INA §
22 212(a)(6)(A)(i). Therefore, the Attorney General, "may continue to detain" and "may release on
23 bond." *Id.* While this language is discretionary, the statute provides that the alien has the right to
24 request a custody redetermination (i.e., bond hearing) before an IJ – which is precisely what Mr.
25 Garcia Rincon has done. INA § 236, 8 U.S.C. § 1226. Likewise, *Matter of Yajure Jurtado*, 27

1 I&N Dec. 795, 797–98 (BIA 2020) and *Matter of Adeniji*, 25 I&N Dec. 1102, 1111 (BIA 1999)
2 confirm that custody authority for such respondents lies under § 236(a), giving the Immigration
3 Judge jurisdiction to redetermine bond.

4 Like *Lopez-Campos*, supra, the NTA in Respondent’s case reflects this reality: DHS
5 checked the box for “alien present in the United States who has not been admitted or paroled,”
6 not “arriving alien.” Only after Respondent requested a bond hearing did DHS attempt to recast
7 his detention authority under § 235(b)(2)(A). *Id.*

8
9 Congressional intent further confirms this reading. If Congress had intended for INA §
10 235 to govern all aliens present in the country who have not been admitted—regardless of how
11 long they have been here—then the recent amendment through the Laken Riley Act, which
12 exempts a subset of aliens, would be pointless, not merely a “doubly sure” as DHS suggests.
13 (DHS Appeal Brief, pg 21).

14 The only logical reading is that INA § 235 applies in a specific and narrower context,
15 such as recent arrivals at or near the border, while INA § 236 governs those, like Petitioner, who
16 has lived in this country for nearly eighteen years. Moreover, Petitioner is prima facie eligible
17 for cancellation of removal under INA § 240A(b). His statutory eligibility for relief provides an
18 additional and compelling incentive to appear at all future hearings, further demonstrating that he
19 falls squarely within § 236(a) custody authority.

20 The Federal Respondents’ argument that these phrases are synonymous violates the
21 fundamental canon of statutory construction that “a statute ought, upon the whole, to be so
22 construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or
23 insignificant.” *Duncan v. Walker*, 533 U.S. 167, 121 S. Ct. 2120 (2001). Courts are “reluctant to
24 treat statutory terms as surplusage” in any setting. *Id.* This principle is particularly important
25

1 when the term occupies "so pivotal a place in the statutory scheme" as does the phrase "seeking
2 admission" in § 1225(b)(2)(A). *id.* If Congress had intended § 1225(b)(2)(A) to apply to all
3 "applicants for admission" as defined in § 1225(a)(1), it would have simply used that term rather
4 than adding the qualifier "seeking admission."

5 Numerous district courts have recognized this distinction. As one court explained, "If §
6 1225(b)(2)(A) applied to each 'applicant for admission,' the phrase 'seeking admission' would be
7 surplusage. The canon against surplusage urges courts to give each word meaning." *Chang*
8 *Barrios v. Shepley*, No. 1:25-CV-00406-JAW, 2025 WL 2772579, at *8 (D. Me. Sept. 29, 2025).
9

10 Similarly, another court noted, "If all applicants for admission were seeking admission to
11 the country, there would be no need to include the phrase seeking admission in the statute." *Loa*
12 *Caballero v. Baltazar*, No. 25-cv-03120-NYW, 2025 U.S. Dist. LEXIS 208290 (D. Colo. Oct.
13 22, 2025).

14 **III. THE FEDERAL RESPONDENTS' INTERPRETATION LEADS TO ABSURD** 15 **RESULTS.**

16 The Federal Respondents' interpretation—that all aliens present without admission are
17 subject to mandatory detention under § 1225(b)(2)(A) regardless of their circumstances—leads
18 to results that Congress could not have intended. Under this reading, virtually all undocumented
19 immigrants in the United States would be subject to mandatory detention without possibility of
20 bond if placed in removal proceedings, regardless of their ties to the community, lack of flight
21 risk, or non-dangerousness.

22 Such an interpretation raises serious constitutional concerns. The Supreme Court has
23 recognized that permanent detention without the possibility of bond would be constitutionally
24 problematic and has construed immigration statutes to avoid such results. *Usama Jamil Hamama*
25 *v. Adducci*, 946 F.3d 875 (6th Cir. 2020). The canon of constitutional avoidance permits courts

1 "to choose between competing plausible interpretations of a statutory text, one of which
2 implicates constitutional problems the other would avoid." *D.B. v. Cardall*, 826 F.3d 721 (4th
3 Cir. 2016). This canon "allows courts to avoid the decision of constitutional questions" and is "a
4 tool for choosing between competing plausible interpretations of a statutory text, resting on the
5 reasonable presumption that Congress did not intend the alternative which raises serious
6 constitutional doubts." *Clark v. Suarez Martinez*, 543 U.S. 371, 125 S. Ct. 716 (2005).

7
8 The Supreme Court has applied this principle in the immigration context, construing an
9 immigration statute "to contain an implicit 'reasonable time' limitation" due to "serious
10 constitutional concerns" with the "indefinite detention" of certain aliens. *D.B. v. Cardall*.
11 Similarly, here, interpreting § 1225(b)(2)(A) to apply only to aliens actively seeking admission at
12 or near the time of entry avoids the serious constitutional concerns that would arise from
13 subjecting long-term residents to mandatory detention without bond.

14 **IV. THE BIA'S DECISION IN *MATTER OF YAJURE HURTADO* IS NOT ENTITLED**
15 **TO DEFERENCE AND HAS BEEN VACATED**

16 Federal Respondents rely heavily on the BIA's recent decision in *Matter of Yajure*
17 *Hurtado*. The decision represents a sharp departure from decades of agency practice under which
18 immigration judges exercised bond jurisdiction for long-term residents. More significantly, a
19 federal district court in California has vacated *Hurtado*, stripping it of any legal effect and
20 confirming its erroneous interpretation of the detention statutes.

21 Even if *Hurtado* had not been vacated, it would still merit little or no deference. When an
22 agency reverses longstanding policy, it must acknowledge the change, provide reasoned
23 explanation, and account for reliance interests. The Supreme Court has recognized that when an
24 agency changes its existing position, it "must at least 'display awareness that it is changing
25 position' and 'show that there are good reasons for the new policy.'" *Encino Motorcars, LLC v.*

1 *Navarro*, 579 U.S. 211, 136 S. Ct. 2117 (2016). Moreover, the agency must be "cognizant that
2 longstanding policies may have 'engendered serious reliance interests that must be taken into
3 account. '" *Id.* An "unexplained inconsistency" in agency policy is "a reason for holding an
4 interpretation to be an arbitrary and capricious change from agency practice." *Id.* Furthermore,
5 "an agency interpretation that conflicts with the agency's earlier interpretation is entitled to
6 considerably less deference than a consistently held agency view." *Cargill v. Garland*, 57 F.4th
7 447 (5th Cir. 2023). The BIA's sudden reversal of its longstanding interpretation significantly
8 diminishes any deference owed to Hurtado.

9
10 **V. SECTION 1226(A) IS THE PROPER AUTHORITY FOR PETITIONER'S
11 DETENTION**

12 The more reasonable interpretation of the statutory scheme is that § 1225(b)(2)(A)
13 applies to aliens who are actively "seeking admission" at or near the time of entry, while §
14 1226(a) applies to aliens who have been living in the United States for extended periods. Unlike
15 § 1225(b)(2), § 1226(a) "applies to a wide swath of noncitizens, many of whom have no criminal
16 record at all." *Hernandez-Lara v. Lyons*, 10 F.4th 19 (1st Cir. 2021). This provision allows for
17 bond hearings, where a noncitizen can demonstrate "that such release would not pose a danger to
18 property or persons, and that the alien is likely to appear for any future proceeding." *Id.*

19 This interpretation is consistent with the traditional understanding of these provisions. As
20 one court explained, "§ 1226 applies to noncitizens already present in the United States, while §
21 1225 authorizes detention of certain noncitizens seeking admission." *Ortiz Donis v. Chestnut*,
22 No. 1:25-CV-01228 JLT SAB (E.D. Cal. 2025).

23 Numerous district courts have rejected the Federal Respondents' expansive construction
24 of § 1225(b)(2). These courts have "examined the text, structure, agency application, and
25 legislative history of 1225(b)(2) and concluded that it applies only to noncitizens 'seeking

admission,' a category that does not include noncitizens like Petitioner, living in the interior of the country." *Aceros v. Kaiser*, No. 25-cv-06924-EMC (N.D. Cal. Sep. 12, 2025). As one court held, "the detention of noncitizens such as Petitioner, who are arrested and detained within the United States, is governed by 8 U.S.C. § 1226(a) and [Petitioner] is thus entitled to a bond hearing." *Rocha v. Hyde, Civil Action*, No. 25-CV-12584-ADB, (D. Mass. Oct. 2, 2025).

Indeed, the Federal Respondents acknowledge that this Court has consistently ruled in favor of similarly situated petitioners in multiple cases, finding they are entitled to bond hearings. The Federal Respondents cite eight cases in which this Court has rejected their interpretation of § 1225(b)(2). This consistent precedent further supports Petitioner's position.

VI. THE GOVERNMENT'S INTERPRETATION HAS BEEN REJECTED BY THE OVERWHELMING MAJORITY OF COURTS AND RAISES SERIOUS CONSTITUTIONAL CONCERNS

Federal courts across the country have overwhelmingly rejected the government's expansive construction of § 1225(b)(2) and concluded that it applies only to noncitizens actively "seeking admission," not long-term interior residents arrested years after entry. These courts have examined the statutory text, structure, legislative history, and agency practice and consistently held that detention in these circumstances is governed by § 1226(a), which provides for bond hearings.

As recently as October 27, 2025, the court in *Orellana v. Noem*, No. 4:25-CV-112-RGJ, 2025 WL 3006763 (W.D. Ky. Oct. 27, 2025), conducted a thorough analysis and rejected the government's reliance on outlier district court cases, emphasizing that the overwhelming majority of courts nationwide have reached the opposite conclusion. The court explained that those outlier decisions failed to engage with the statutory text, structure, and existing body of

1 precedent and expressly rejected the BIA's decision in *Matter of Yajure-Hurtado* as incorrect
2 and nonbinding on federal courts.

3 Numerous courts—including courts within the Ninth Circuit—have likewise held that §
4 1226(a), not § 1225(b)(2), governs detention for individuals arrested in the interior, confirming
5 that the government's interpretation is an outlier inconsistent with the statutory scheme. Beyond
6 its conflict with the statute and prevailing authority, the government's interpretation raises
7 serious constitutional concerns. The Fifth Amendment's Due Process Clause protects all
8 persons within the United States, including undocumented immigrants, from arbitrary detention.
9 *Black v. Dir. Thomas Decker*, 103 F.4th 133 (2d Cir. 2024); *Zuniga-Perez v. Sessions*, 897 F.3d
10 114 (2d Cir. 2018). Even when civil detention is authorized by statute, due process requires
11 procedures sufficient to ensure detention is necessary in the individual case. *Prieto-Romero v.*
12 *Clark*, 534 F.3d 1053 (9th Cir. 2008).

14 Mandatory detention without an individualized determination of flight risk or danger—
15 particularly for long-term residents with substantial family and community ties—raises grave
16 due process concerns. *United States v. Salerno*, 481 U.S. 739 (1987). The Supreme Court has
17 repeatedly construed immigration detention statutes to avoid interpretations that permit
18 indefinite or unreviewable detention. *Zadvydas v. Davis*, 533 U.S. 678 (2001); *Diaz v. Garland*,
19 53 F.4th 1189 (9th Cir. 2022).

21 Under the canon of constitutional avoidance, courts must adopt plausible interpretations
22 of statutory text that avoid serious constitutional problems. *Clark v. Suarez Martinez*, 543 U.S.
23 371 (2005); *D.B. v. Cardall*, 826 F.3d 721 (4th Cir. 2016). Interpreting § 1225(b)(2) to apply
24 only to recent arrivals actively seeking admission—while applying § 1226(a) to long-term
25

1 interior residents—respects the statutory text, aligns with overwhelming judicial authority, and
2 avoids serious due process violations.

3 Accordingly, Petitioner’s detention must be governed by § 1226(a), entitling him to a
4 prompt bond hearing before an Immigration Judge.

5 **CONCLUSION**

6 For the foregoing reasons, Petitioner Leobardo Garcia Rincon respectfully requests that
7 this Court grant the writ of habeas corpus and order a bond hearing pursuant to 8 U.S.C. §
8 1226(a). The plain language of the statute, properly interpreted in context and in light of
9 constitutional concerns, supports the conclusion that § 1226(a), not § 1225(b)(2), governs
10 Petitioner's detention. This interpretation is consistent with this Court's prior rulings in similar
11 cases and with the due process protections afforded to long-term residents of the United States.
12

13 Dated this 24th day of February 2026.

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